345

SUPREME COURT OF THE UNITED STATES.

No. 138.

JONATHAN M. REED, PLAINTIFF IN ERROR,

vs.

PROPRIETORS OF LOCKS AND CANALS ON MERRIMAC RIVER.

IN ERROR TO THE CIRCUIT COURT U. S. FOR MASSACHUSETTS.

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UNITED STATES, *ss:*

The President of the United States, to the judges of the circuit court [L. S.] holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Jonathan M. Reed, plaintiff, and the Proprietors of Locks and Canals on Merrimack river, defendants, in a plea of land, a manifest error has intervened to the great damage of the said Jonathan M. Reed, as in his complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this tenth day of April, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States the seventieth.

JAS. B. ROBB, *Clerk.*

Allowed by—

LEVI WOODBURY,
Associate justice of Supreme Court.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

To the Proprietors of Locks and Canals on Merrimack river, a corporation duly established by the laws of the Commonwealth of Massachusetts, greeting:

Whereas there has issued from the Supreme Court of the United States a writ of error, bearing date on the 10th day of April, A. D. 1846, directed to the judges of the circuit court of the United States, holden in and for the Massachusetts district, wherein it is suggested that in the record and process, and also in the rendering of judgment in a suit between Jonathan M. Reed, of Detroit, in the county of Wayne, and State of Michigan, and a citizen of said State, gentleman, as plaintiff, and you as defendants, in a plea of land, manifest error has intervened to the great damage of the said plaintiff; and the said judges are by said writ commanded, if judgment thereof be given, that under their seals, distinctly and openly, they send the record and process in the suit

aforesaid, with all things concerning them, together with the said writ, so that they have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December, A. D. 1846, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

You, therefore, the said Proprietors of the Locks and Canals aforesaid, are hereby notified of said writ of error, and of the filing of the same as aforesaid, and cited to appear, if you see cause, at the said Supreme Court, to be holden as aforesaid, to make answer thereto.

Given under my hand and seal, at Boston, this tenth day of April, [L. S.] A. D. 1846, in the seventieth year of the independence of the United States of America.

LEVI WOODBURY,
Ass. justice of Sup. Court of U. States.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

BOSTON, *April 22d*, 1846.

I have this day given in hand to John P. Robinson, esquire, the attorney of record for the "Proprietors of the Locks and Canals on Merrimack river," a true and attested copy of the foregoing order of notice.

ISAAC O. BARNES,
Marshal for the dist. of Massachusetts.

Marshal's fees:

Service	$2 00
Copy	1 00
Travel 450 . .	22 50
	25 50

UNITED STATES OF AMERICA,
Massachusetts district, ss:

At a circuit court of the United States, for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Wednesday the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-five.

Before the honorable Levi Woodbury, associate justice, Peleg Sprague, district judge.

Jonathan M. Reed, of Detroit, in the county of Wayne, and State of Michigan, gentleman, who is a citizen of said State of Michigan, in a plea of land, wherein the said Reed demands against the said Proprietors a certain piece or parcel of land, with the appurtenances, situate in the city of Lowell aforesaid, containing seven acres and one hundred and forty-two and a quarter square rods, and bounded as follows: Beginning at the northwesterly corner thereof, at a corner of land for-

merly owned by Andrew Fletcher, deceased, at a stake and stones; thence, south two and three-fourths degrees east, by the lands so formerly owned by Andrew Fletcher, deceased, thirty-five rods to land formerly owned by Nathan Tyler, deceased; thence, north seventy-three degrees east, by land formerly owned by Nathan Tyler, deceased, thirty-seven rods to a point in Dutton street, so called; thence, north three degrees west, by land formerly owned by Joseph Fletcher, formerly called the Portuguese Piece, twenty-eight rods six and one quarter links to a point; and thence, south eighty-eight degrees west, by what was formerly an old road, thirty-six rods eight and one-third links, to the point began at; which said piece of land, with the appurtenances, is worth more than five hundred dollars, to wit, the sum of twenty thousand dollars, whereof the said proprietors unjustly and without judgment disseised him, the said Nathan M. Reed, within twenty years now last past; whereupon the said Reed says, he was seized of the demanded premises, with the appurtenances, in his demesne as of fee simple and right, within twenty years now last past, by taking the profits thereof to the value of ten dollars by the year; and the said Proprietors unjustly disseised him thereof, and still unjustly withhold the same, to the damage of the said plaintiff, as he says, the sum of ten thousand dollars.

This action was entered at the May term, A. D. 1844, of this court, when the parties appeared by their respective attorneys, and thence the same was continued, from term to term, until this present term. And now the said Proprietors of the Locks and Canals on Merrimack river, come and defend, &c., and for plea say, they never disseised the said Reed in manner and form as he hath in his count and declaration alleged; and of this they put themselves upon the country.

By JOHN P. ROBINSON,
Their attorney.

And the demandant likewise, by his attorney,

G. PARKER,
For REED.

Issue being thus joined, the cause, after a full hearing, is committed to a jury, sworn according to law to try the same, who, after hearing all matters and things concerning the same, return their verdict therein, and upon oath say, that the said tenants did not disseise the said demandant in manner and form as he has declared against them. It is therefore considered by the court, that the said Proprietors of Locks and Canals on Merrimack river, recover against the said Jonathan M. Reed their costs, taxed at

Bill of exceptions.—Bill of exceptions.

JONATHAN M. REED
vs.
THE PROPRIETORS of Locks and Canals on Merrimack river.

Be it remembered, that at a term of the circuit court of the United

States, for the first circuit, holden at Boston, within and for the district of Massachusetts, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-five, by the honorable Levi Woodbury, esquire, associate justice of the Supreme Court of the United States, and the honorable Peleg Sprague, esquire, judge of the district court of the United States for said district, came Jonathan M. Reed, of Detroit, in the county of Wayne, and State of Michigan, gentleman, who is a citizen of said State of Michigan; and in a plea of land declared against the Proprietors of Locks and Canals on Merrimack river, a body corporate, established by the laws of Massachusetts, and whose place of business is at Lowell, in the county of Middlesex, and Commonwealth of Massachusetts. The writ and declaration, and the service thereof, and the tenants' plea, and the issue joined, are as follows, to wit:

Copy of writ.

MASSACHUSETTS DISTRICT, *ss:*

The President of the United States of America, to the marshal of our district of Massachusetts, or his deputy, greeting:

We command you to attach the goods or estate of the Proprietors of Locks and Canals on Merrimack river, a body corporate, established by the laws of the Commonwealth of Massachusetts, and whose place of business is at Lowell, in the county of Middlesex, and Commonwealth aforesaid, and which said Proprietors, the plaintiff in this action avers, are citizens of said district of Massachusetts, to the value of one thousand dollars; and summon the said Proprietors (if they may be found within your district) to appear before our judges of our circuit court of said United States, for the first circuit, next to be holden at Boston, within and for our said district of Massachusetts, on the fifteenth day of May now next coming, then and there in our said court to answer unto Jonathan M. Reed, of Detroit, in the county of Wayne, and State of Michigan, gentleman, who is a citizen of said State of Michigan, in a plea of land, wherein the said Reed demands against the said Proprietors a certain piece or parcel of land, with the appurtenances, situate in the city of Lowell aforesaid, containing seven acres and one hundred and forty-two and a quarter square rods, and bounded as follows: Beginning at the northwesterly corner thereof, at the corner of land formerly owned by Andrew Fletcher, deceased, at a stake and stones; thence, south two and three-fourths degrees east, by the land so formerly owned by Andrew Fletcher, deceased, thirty-five rods to land formerly owned by Nathan Tyler, deceased; thence, north seventy-three degrees east, by land formerly owned by Nathan Tyler, deceased, thirty-seven rods to a point in Dutton street, so called; thence, north three degrees west, by land formerly owned by Joseph Fletcher, formerly called the Portuguese Piece, twenty-eight rods six and one quarter links to a point; thence, south eighty-eight degrees west, by what was formerly an old road, thirty-six rods eight and one-third links to the point

begun at; which said piece of land, with the appurtenances, is worth more than five hundred dollars, to wit, the sum of twenty thousand dollars, whereof the said proprietors unjustly, and without judgment disseised him, the said Jonathan M. Reed, within twenty years now last past; whereupon the said Reed says, he was seized of the demanded premises, with the appurtenances, in his demesne as of fee simple and right, within twenty years now last past, by taking the profit thereof, to the value of ten dollars by the year, and the said Proprietors unjustly disseised him thereof, and still unjustly withhold the same, to the damage of the said plaintiff, as he says, the sum of ten thousand dollars, which shall then and there be made to appear, with other due damages; and have you there this writ, with your doings therein.

Witness the Hon. Roger B. Taney, at Boston, the twentieth day of October, in the year of our Lord one thousand eight hundred and forty-three.

(Signed,) FRANCIS BASSETT, *Clerk.*

Copy of Marshal's return on the writ.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

Boston, Oct. 27th, 1843.

Pursuant hereunto I have attached a chip, the property of the within named corporation, and summoned the said corporation to appear as herein directed, by giving in hand to Patrick T. Jackson, esquire, the treasurer of said corporation, a true and attested copy of this writ.

(Signed,) HENRY HARRIS,
U. S. deputy marshal.

Service	- -	30
Travel	- -	4
Copy	- -	1 50
		$1 84

Defendant's plea.

And now, the said Proprietors of the Locks and Canals on Merrimack river, come and defend, &c., and for plea say, they never disseised the said Reed in manner and form as he hath in his count and declaration set forth; and of this put themselves upon the country.

By JOHN P. ROBINSON.

And the demandant likewise.

By G. PARKER,
For REED.

Issue joined.

Which issue being joined as aforesaid, came on to be tried by a jury duly empannelled and sworn for that purpose.

The demandant proved the following facts, to wit: That Thomas

Fletcher died seized of the land described in the deed from Jacob Kittredge and wife to Benjamin Melvin, senior, dated the 27th day of April, A. D. 1782, hereafter set forth in the year 1771; and that the demanded premises are parcel thereof. That said Thomas Fletcher left a widow and two daughters, Rebecca and Joanna, as his heirs at law; Rebecca married Dr. Jacob Kittredge, January 9th, 1773, and removed with him to North Brookfield, in the county of Worcester, and Commonwealth of Massachusetts, where they resided until their decease. He died in the summer of 1813, and she died in September, 1818. That Joanna married Benjamin Melvin, senior, in February, 1777, who removed upon the farm. He died in April, 1830; she died in September, 1826. *He died in April*, 1830 *; she died in September*, 1826. The widow of Thomas Fletcher died in 1798.

The said Jacob and Rebecca Kittredge had ten children, who were as follows: Rebecca, who married Samuel Converse.

2. Benjamin, who died prior to 1824, leaving children, viz., Benjamin, Henry W., Edward A., Marion P., and Austis Maria.

3 Oliver, 4 Joseph, 5 John, 6 Fletcher, 7 Asaph, 8 Mary, who married Francis Wright, 9 Thomas, who died prior to 1820, leaving a daughter, Lucinda, as his only heir at law; 10 Jacob, who died prior to 1813, leaving three sons, viz., Justus, Otis, and Whitney, as his heirs at law.

The said Benjamin and Joanna Melvin had seven children, viz., James, who was born in 1778, Benjamin, Dawes, Rufus, Charles, Joanna, and Lucretia, who married Campbell Russell prior to 1830; and said Russell died in the year 1837. Said Charles died in 1830, leaving four children, viz., Charles B., Susan Maria, Nathaniel P., and Mary Jane, all of whom are minors.

The demandant then introduced the original deed from Jacob Kittredge and wife to Benjamin Melvin, senior, of which the following is a copy.

No. 1, *copy of deed—Jacob Kittredge and wife to Benjamin Melvin.*

Know all men by these presents, that we, Jacob Kittredge, of Brookfield, in the county of Worcester, and Commonwealth of Massachusetts, physician, and Rebecca, wife of the said Jacob, in consideration of the just sum of three hundred pounds, lawful money, to us in hand paid, before the delivery, by Benjamin Melvin, of Chelmsford, in the county of Middlesex, and commonwealth aforesaid, yeoman, have given, granted, bargained, and sold, and do by these give, grant, bargain, sell, alien, and fully, freely, and absolutely convey and confirm unto him, the said Benjamin Melvin, and to his heirs and assigns, forever, a certain piece or parcel of land, lying and being in Chelmsford aforesaid, containing by estimation about one hundred and thirty acres, be the same more or less, that is to say, the one-half thereof, and no more; reckoning the same for quantity and quality; the whole of which was, some years past, owned by Mr. Thomas Fletcher, late of said Chelmsford, now deceased, and is bound as follows, viz: Beginning at the county road, and runs southerly, on land of John Tyng, esq., and then

turning and running westerly on said Tyng's land; then runs southerly on land of Andrew Fletcher; then running easterly, upon land of Josiah Fletcher; then runs westerly, upon land of said Josiah Fletcher; then turns southerly, and runs upon land of the said Andrew Fletcher, till it comes to the northerly part of Meeting House hill, so called; then turns easterly, and runs on land of the said Josiah Fletcher; then runs northerly, on land of the said Josiah Fletcher; then turns, and runs easterly, on land of the said Josiah Fletcher; then runs northerly, on land late belonging to Henry Fletcher, deceased; then turns, and runs easterly, on land of the said Henry Fletcher, as the same was in his lifetime, and still easterly, upon land of Joel Spalding, till it comes to Merrimack river; then runs northerly, on said river till it comes to the land of the aforesaid Tyng; then turns westerly, and runs on said Tyng's land; then northerly, till it comes to said river; then runs upon said river to the Mill landing; and from thence, on the road until it comes to the land first mentioned. Also, one piece of meadow land, lying in Chelmsford aforesaid, on River Meadow brook, below Davis' grist or corn mill, containing by estimation one acre, be the same more or less, lying in common with the said Benjamin Melvin's and Micah Spaulding's meadow; the whole of which meadow is owned, before the ensealing and executing of this present instrument, by the said Kittredge; Melvin's and Spaulding's contains as judged four acres, more or less.

To have and to hold the said granted and bargained premises, together with all the houses and other buildings, with all their appurtenances, free of all incumbrances whatsover, to him, the said Benjamin Melvin, and to his heirs and assigns, with all privileges and benefits thereof, as an absolute estate of inheritance in fee simple, forever; and we, the said Jacob Kittredge and Rebecca, his wife, for ourselves, our heirs, executors, and administrators, do covenant and engage the above demised premises to him, the said Benjamin Melvin, and to his heirs and assigns, against the lawful claims and demands of any person or persons whatsoever, forever hereafter to warrant, secure, and defend, by these presents.

In witness whereof, we, the said Jacob Kittredge and Rebecca, the wife of the said Jacob, have hereunto set our hands and seals, this twenty-seventh day of April, anno domini one thousand seven hundred and eighty-two.

A JACOB KITTREDGE & SEAL.
B REBECCA KITTREDGE & SEAL.

Signed, sealed, and delivered in presence of—
JOHN WYETH, } A
ELIZABETH WYETH, }
WILLIAM AYRES, } B
SUSANNA ALLEN. }

[REC. CXXXVIII, D. T. 1846.]—2

WORCESTER, *ss:*

August 15*th*, 1782.

The above named Jacob and Rebecca Kittredge personally appeared and acknowledged this instrument to be their free act and deed.

Before, WILLIAM AYRES,
Jus. pacis.

MIDDLESEX, *ss:*

Cambridge, Dec. 2nd, 1794.

Received and filed by Abraham Biglow, clerk of the court of common pleas, and accordingly entered by Samuel Bartlett, registrar.

No. 2. The demandant then introduced an original deed from said Dawes Melvin, Joanna Melvin, and Lucretia Russell, dated March 1st, 1839, duly acknowledged and recorded, conveying to Benjamin Melvin three undivided seventh parts of the demanded premises.

No. 3. Also a deed from James Melvin, dated the 25th day of July, A. D. 1839, duly acknowledged and recorded, conveying to the said Benjamin Melvin one undivided seventh part of the demanded premises.

No. 4. Also a deed from Charles B. Melvin, Susan Maria Melvin, Nathaniel P. Melvin, and Mary Jane Melvin, the heirs at law of Charles Melvin, deceased, dated the 25th day of July, A. D. 1839, and duly acknowledged and recorded, conveying to the said Benjamin Melvin, jun., one undivided seventh part of the demanded premises.

No. 5. He also put into the case a deed of quit-claim from said Dawes Melvin, Joanna Melvin, and Lucretia Russell, dated the 22nd day of July, A. D. 1839, duly acknowledged and recorded, purporting to quit-claim and release to the said Benjamin Melvin, all their right, title, and interest in the demanded premises.

No. 6. Also a deed containing general covenants of warranty, against the claims and demands of all persons from Benjamin Melvin, jun., dated the 1st day of March, A. D. 1839, duly acknowledged and recorded, conveying to the demandant and Grenville Parker six undivided seventh parts of the demanded premises.

No. 7. Also a deed from said Grenville Parker, dated the 7th day of August, A. D. 1843, duly acknowledged and recorded, conveying to the demandant all his right, title, and interest in the demanded premises.

The demandant proved that the last six deeds were delivered upon the demanded premises, together with the possession of the land, to the respective grantees named therein, on the days of their respective dates merely; formal entries having been openly made upon the demanded premises by the respective grantors for that purpose, without any other notice to, or disturbing those in possession.

The tenants introduced the following testimony, viz't:

Copy of a judgment.

No. 1. COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

At the supreme judicial court of the Commonwealth of Massachusetts, begun and holden at Cambridge, within and for the county of Middlesex, on the third Tuesday of October, being the 18th day of said month, anno domini 1842.

Benjamin Melvin, of Sanford, county of York, and State of Maine, gentleman, appellant, vs. the Proprietors of the Locks and Canals on the Merrimack river, a body corporate in the county of Middlesex, appellees, from a judgment of the court of common pleas, holden at Concord, within and for the county of Middlesex, on the second Monday of June, A. D. 1840, when and where the appellant was plaintiff, and the appellees were defendants, in a plea of land, wherein the said Melvin demands against the said Proprietors a certain piece of land, with the appurtenances, situate in Lowell, in said county of Middlesex, containing seven acres, and one hundred and forty-two and a quarter square rods, bounded as follows, to wit: Beginning at the northwesterly corner thereof, at the corner of land formerly owned by Andrew Fletcher, deceased; thence south two and three fourth degrees east, by the land formerly owned by said Andrew Fletcher, deceased, thirty-five rods, to land formerly owned by Nathan Tyler, deceased; thence north seventy-three degrees east, by land of said Nathan Tyler, thirty-seven rods, to land of Joseph Fletcher, and called the Portuguese piece; thence north three degrees west, by said Portuguese piece, twenty-eight rods six and one quarter links, to the northwesterly corner thereof, and to what was formerly a town road; thence south eighty-eight degrees west, by what was formerly said road, thirty-six rods eight and one third links, to the point begun at; of which the said Proprietors, unjustly and without judgment, disseised the said Melvin, within twenty years now last past, as it is said. And whereupon the said Melvin says, that within twenty years now last past, he himself was seized of the tenements aforesaid, with the appurtenances, in his demesne, as of fee simple and right; and of which the said Proprietors disseised him as aforesaid, to the damage of the said Melvin (as he saith,) the sum of one hundred thousand dollars; which judgment of the said court of common pleas on the demurrer there was, that the said Proprietors of the Locks and Canals on the Merrimack river, should recover against the said Benjamin Melvin their costs. This appeal was brought forward at the supreme judicial court, holden at Cambridge aforesaid, on the second Tuesday of October, 1840, when and where the said Proprietors of Locks and Canals on Merrimack river, by John P. Robinson, esquire, their attorney, come and defend, &c., and said they never disseised the said Melvin as he hath in his declaration alleged; and of this they put themselves upon the country.

And the plaintiff, by Grenville Parker, esquire, his attorney, did the like.

Whereupon the cause, after a full hearing, was committed to a jury, sworn according to law to try the same, who returned their verdict therein upon oath; that is to say, they "find that the mortgage from B. Melvin and wife, to Jacob Kittredge, does not embrace the land claimed by the plaintiff." And thereupon the defendants moved for a new trial; and thence said action hath been continued for the opinion of the court, on the report of the judge, from term to term of this court, for this county, to this time. And now, after a full hearing of the parties, and mature deliberation by the court had in the premises, the court order the demandant non-suit, and judgment for the tenants. And thereupon the demandant, although solemnly called to come into court, does not appear, but becomes non-suit. It is therefore considered by the court here, that the said Proprietors of Locks and Canals on Merrimack river, recover against the said Benjamin Melvin their costs, taxed at two hundred and one dollars and fifty-two cents.

In testimony that the foregoing is a true copy of record, I have hereunto set my hand, and affixed the seal of said supreme judi-
[SEAL.] cial court, this twenty-first day of May, A. D. 1845.

Attest: E. PHINNEY, *Clerk*.

No. 2. The agreement of the parties, as stated by the judge who tried that cause, at the close of report in that action, to wit: After all the evidence was closed and the cause was about to be put to the jury, the presiding judge having suggested to the counsel, that upon the matter of law which had been raised in the case, upon the legal construction of the various conveyances from the heirs of Kittredge, viz't: of Samuel Converse, Oliver Kittredge, Joseph Kittredge, John Kittredge, Eli Forbes, Austis Kittredge, and another from same. Also two deeds from Moses Cheever to Thomas M. Clark; a deed from said Clark to Kirk Boott, and from said Boott to the Merrimack Manufacturing Company, and two deeds from Henry Rice, and the Merrimack Manufacturing Company to the tenants. He showed, for the purposes of the trial, rule that these conveyances were not necessarily restricted to the quantity of land actually included in the mortgage deed of Benjamin Melvin to Jacob Kittredge. But if it should appear to the jury, that the land on which Cheever lived, and what was called Cheever's farm, occupied and improved as such, adversely to the demandant, and those under whom he claims, did embrace the demanded premises, it was competent to the jury to find the effect of such conveyance to be such that they might connect the several adverse possessions of the grantors of said deeds as one continuous disseisin; and that the objection taken by the plaintiff, that the said disseisins were several successive disseisins, not connected, could not in such case avail.

Upon this proposed ruling of the court being stated, the counsel for the demandant stated, that under the proposed instructions there could be no question for the jury, inasmuch as the evidence as was conceded shewed that there had been an adverse possession in Cheever and the other grantees for more than thirty years before the institution of this

action. But they relied upon the deeds and legal construction to be given them to show, that the disseisins were successive and disconnected; and at the request of the plaintiff, and with a view to settle by the jury the sole question, whether the demanded premises were included in the mortgage of Benjamin Melvin to Jacob Kittredge, the question of disseisin and defence arising from adverse possession was taken from the consideration of the jury. The plaintiff agreeing, that if a verdict should be returned in his favor by the jury, on the question that was to be submitted to them, that the further question, that of defence arising from disseisin, should be reserved for the consideration of the whole court, under the agreement on his part, that if upon all the evidence, and all the inferences that the jury might properly order from the facts proved, the court should be of opinion that it was competent for the jury to have found a verdict in favor of the defendants, on the ground of adverse possession and disseisin, then the plaintiff was to become nonsuit; but if, upon the whole evidence, the court should be of opinion that it would not have been competent for the jury to have found a verdict for the defendants upon the ground of disseisin, then judgment to be entered in favor of the plaintiff; unless upon the grounds of defence, upon the other exceptions taken in the case, the defendants shew sufficient legal grounds to bar the right of the plaintiff to recover; the question whether the demanded premises was included in the mortgage from Benjamin Melvin to Jacob Kittredge, was submitted to the jury under instructions from the court, to which no exceptions, were taken by either party; and upon this question the jury returned a verdict in favor of the plaintiff, viz't: That the demanded premises were not included in said mortgage deed; and thereupon the question of disseisin is now reserved for the consideration of the court, upon the condition hereinbefore recited.

Trial reference.

C. A. DEWEY, *J. S. J. court.*

No. 3, *copy of mortgage deed—Benjamin Melvin and wife to Jacob Kittredge.*

This indenture, made this twenty-seventh day of April, in the year of our Lord one thousand seven hundred and eighty-two, between Benjamin Melvin, of Chelmsford, in the county of Middlesex, and Commonwealth of Massachusetts, yeoman, on the one part; together, also, with Joanna, the wife of the said Melvin, and Jacob Kittredge, of Brookfield, in the county of Worcester and commonwealth aforesaid, physician, on the other part, witnesseth: that whereas the said Benjamin Melvin stands justly indebted to the said Jacob Kittredge, in the sum of three hundred pounds of lawful silver money, conditioned for the payment of three hundred pounds of lawful money, being silver, within five years from the aforesaid date, together with lawful interest therefor annually, till it shall be paid, as by the bond, reference thereto being had, may more fully appear. Now the said Benjamin Melvin and Joanna, as a collateral and further security for said payment, and also for and in consid-

eration of the sum of five shillings to them in hand paid before the ensealing hereof, by the said Jacob Kittredge, the receipt whereof they, the said Benjamin Melvin and Joanna, do hereby acknowledge, have granted, bargained, sold, conveyed, and confirmed unto the said Jacob Kittredge, and by these presents do grant, bargain, sell, convey, and confirm unto the said Jacob Kittredge, and to his heirs forever, a certain tract or parcel of land, lying and being in Chelmsford, in Chelmsford Neck, so called, in said county of Middlesex, containing by estimation one hundred acres, be the same more or less, lying altogether in one piece, without any division, except only one county bridle road, which runs through the northerly part of said farm or tract of land, and being a part of the real estate of Mr. Thomas Fletcher, late of said Chelmsford, deceased; together with all the buildings of every kind, and all the privileges, appurtenances, and commodities thereunto belonging, or in any wise appertaining; to have and to hold to the said Jacob Kittredge, and to his heirs and assigns forever, and the said Benjamin Melvin and Joanna his wife, for themselves, their heirs, executors or administrators, do hereby covenant, grant, and agree, to and with the said Jacob Kittredge, his heirs, executors, administrators, and assigns, in manner following, that is to say, that at and until the ensealing and delivery of these presents, we are the true, sole, and lawful owners of the afore granted premises, and stand seized thereof, as a good estate of inheritance in fee simple, having in ourselves good right to sell and dispose of the same in manner as aforesaid; and further, the said Benjamin Melvin and Joanna his wife, and their heirs, executors and administrators, will warrant and defend the aforesaid premises against the lawful claims and demands of every person, and all persons whomsoever.

Provided, always, that the said Benjamin Melvin, or Joanna, his wife, their heirs, executors, or administrators, or any of them, shall and do well and truly pay, or cause to be paid, to the said Jacob Kittredge, or to his heirs, executors, administrators, or assigns, the principal sum aforesaid, with lawful interest in manner aforesaid, according to the true intent and design of said bond, without fraud or further delay, then this present deed and instrument shall be void. And also the bond, afore referred unto, shall in that case be void; but in default thereof, this deed, and also the bond, shall be in force.

In witness whereof, we, the said Benjamin Melvin and Joanna, his wife, have hereunto set their hands and seals, the day and year above written.

BENJAMIN MELVIN & SEAL.
JOANNA MELVIN & SEAL.

Signed, sealed, and delivered in presence of us—
JOHN WYETH,
DEBORAH DIXON.

WORCESTER, *ss:* *August 15th*, 1782.

Benjamin Melvin, signer of this instrument, appearing, acknowledged the same to be his free act and deed.

Before me, WM. AYERS, *Jus. Pacis.*

MIDDLESEX, *ss:* *Cambridge, Sept. 9th*, 1782.
Received and entered by THAD. MARON,
Register.

MIDDLESEX, *ss:* *Nov. 17th*, 1840.
A true copy of the record book 84, page 277, in registry of deed's office.
Attest: WM. F. STONE,
Register.

No. 4.—*Copy of lease*, 1793—*Jacob Kittredge to Benj. Melvin.*

This indenture of lease, made this seventeenth day of April, anno domini one thousand seven hundred and ninety-three, by Jacob Kittredge, of Brookfield, in the county of Worcester, physician, on the one part, and Benjamin Melvin, of Chelmsford, in the county of Middlesex, and Commonwealth of Massachusetts, husbandman, on the other part, *witnesseth:* That the said Jacob Kittredge doth let, lease, and farm let, to the said Benjamin Melvin, his heirs and assigns, for the term of one year next ensuing the date hereof, a certain farm, situate in Chelmsford aforesaid, being that farm which was formerly Thomas Fletcher's, deceased, and is that whereon the said Benjamin Melvin now dwells, and is bounded as follows, viz't: Beginning at a great elm tree, at the corner of the town-way near Nathan Tyler's house, a little north of the barn on said leased premises; then running westerly, southerly, and easterly, by heaps of stones, as the fence now stands, to the town-way at or near Josiah Fletcher's most northerly corner, to a heap of stones; thence southerly by land formerly Andrew Fletcher's, deceased, about one hundred and twenty-four poles, to a stake and stones by Jonathan Williams' land; then running easterly by said Williams' land, forty poles, to a black oak stump with stones on it, by land of Josiah Fletcher; thence northerly by said Fletcher's land, twenty-nine poles and a half, to a heap of stones; then easterly eight poles, to a stake and stones; then northerly and easterly about one hundred and seventy poles, by land belonging to the heirs of Henry Fletcher, late of said Chelmsford, deceased, till it comes to Merrimack river; then running up said river to land belonging to John Tyng, esq.; then westerly and northerly by said Tyngs' to said river; then running up said river by a landing to the end of a wall near Tyler's mills; then by a town-way, to the bound first mentioned, including about one hundred acres, be it more or less, to him, the said Melvin, his heirs and assigns, to use, and improve, and occupy, with the buildings thereon, &c., during the term of one year as aforesaid, with liberty to cut materials for repairing the fences thereon. And the said Benjamin Melvin doth on his part, for himself, his heirs and assigns, promise and engage to husband said leased premises with care and prudence, and pay all the taxes whereby it shall or may be taxed during said term. And at the end of said term, which will be on the seventeenth day of April,

anno domini one thousand seven hundred and ninety-four, and then at that time to restore and deliver up said leased premises to him, the said Kittredge, or his heirs, peaceably, without any molestation or resistance, without making any shift or waste, in as good repair as at this time, accidents and casualties excepted.

In witness whereof, we have hereunto interchangeably set our hands and seals, the date above said.

BENJAMIN MELVIN & SEAL.
JACOB KITTREDGE & SEAL.

Signed, sealed, and delivered in presence of—
NATHAN COBURN.
NATHAN TYLER.

A true copy.
Attest: JNO. CALLENDER, *Clerk*.

No. 5.—*Writ*.

JACOB KITTREDGE
vs.
BENJAMIN MELVIN.

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

To the sheriff of our county of Middlesex, or his deputy, greeting:

We command you that you summon Benjamin Melvin, of Chelmsford, in our county of Middlesex, husbandman, (if he may be found in your precinct,) to appear before our justices of our court of common pleas, to be holden at Cambridge, within and for our county of Middlesex, on the first Tuesday of November instant, then and there in our said court to answer to Jacob Kittredge, of Brookfield, in our county of Worcester, physician, in a plea that the said Benjamin render the plaintiff possession of a certain messuage and lands in Chelmsford, in our said county of Middlesex, containing one hundred acres, and bounded as follows, viz't: Beginning at a great elm tree at the corner of the town way near Nathan Tyler's house, a little north of the barn on said leased premises; then running westerly, southerly, and easterly, by heaps of stones, as the fence now stands, to the town-way at or near Josiah Fletcher's most northerly corner, to a heap of stones; thence southerly by land formerly Andrew Fletcher's, deceased, about one hundred and twenty-four poles, to a stake and stones, to Jonathan Williams' land; then running easterly by said Williams' land forty poles, to a black oak stump with stones on it, by land of Josiah Fletcher; then northerly by said Fletcher's land, twenty-nine poles and a half, to a heap of stones; then easterly, eight poles to a stake and stones; then northerly and easterly about one hundred and seventy poles, by land belonging to the heirs of Henry Fletcher, late of Chelmsford, deceased, till it comes to Merrimack river; then running up said river to land belonging to John Tyng, esq.; then westerly and northerly by said Tyng's to said river;

then running up said river by a landing to the end of a wall near Tyler's mills; then by a town-way to the bound first mentioned, including about one hundred acres, be it more or less. And whereupon the plaintiff complains that he, on the 17th day of April, in the year of our Lord one thousand seven hundred and ninety-three, was seized in fee of the demanded premises, and there on the same day, by his deed of lease of that date, of two parts, duly executed, one part whereof is ready in court to be produced, let and leased the same premises to the said Benjamin, for the term of one year, from the said seventeenth day of April, to be complete and ended; and that the said Benjamin, by the same deed of lease, did covenant and agree with the plaintiff that he would deliver him the possession of the said premises at the expiration of the same term; yet the said Benjamin has unjustly withheld the possession of the premises from the plaintiff, and yet continues unjustly to deforce him therefrom, to the damage of the said Jacob, as he saith, the sum of one thousand pounds, which shall then and there be made to appear, with other due damages; and have you there this writ, with your doings therein.

Witness, James Prescott, esq., at Cambridge, the third day of November, in the year of our Lord one thousand seven hundred and ninety-four.

ABRAM BIGLOW, *Clerk.*

A copy.

ABRAM BIGLOW, *Clerk.*

Copy—attest: JOHN CALLENDER, *Clerk.*

No. 6.—*Copy of judgment in same case.*

COMMONWEALTH OF MASSACHUSETTS,
Middlesex, ss:

At the supreme judicial court begun and holden at Concord, within and for the county of Middlesex, on the second Tuesday of April, being the twelfth day of said month, anno domini 1796:

By the Hon. Francis Dana, esq., chief justice.
" Robert Treat Paine,
" Merlon Sumner,
" Nathan Cushing,
" Thomas Dawes, jr., esq'rs, } justices.

Jacob Kittredge, of Brookfield, in the county of Worcester, physician, appellant, vs. Benjamin Melvin, of Chelmsford, in the county of Middlesex, husbandman, appellee, from a judgment of a court of common pleas, held at Concord, in and for the county of Middlesex, on the second Tuesday of September last, when and where the appellant was plaintiff, and the appellee was defendant, in a plea that the said Benjamin render the plaintiff possession of a certain messuage and lands in Chelmsford, in our said county of Middlesex, containing one hundred acres, &c., as in the writ on file, bearing date the third day of Novem-

ber, A. D. 1794, is at large set forth; at which said court of common pleas, judgment was rendered that the said Benjamin Melvin recover against Jacob Kittredge his costs. The appeal was brought forward at the last term of this court for this county, and from thence said appeal was continued unto this court. And now the appellant appears, but the appellee, although solemnly called to come into court, does not appear, but makes default. It is therefore considered by the court, that the said Jacob Kittredge recover against the said Benjamin Melvin possession of the premises demanded, and costs taxed at $39 77.

Hab. fac. issued April 19th, 1796.

A true copy.
Attest: JOHN CALLENDER, *Clerk.*

No. 7.—*Copy of lease—Jacob Kittredge to Thissell and Cheever*, 1796.

This indenture of lease witnesseth: That Jacob Kittredge, of Brookfield, in the county of Worcester, in the Commonwealth of Massachusetts, physician, let and lease unto Thomas Thissell, of Chelmsford, and Moses Cheever, of Dracut, both in the county of Middlesex and commonwealth aforesaid, yeoman, a certain farm in Chelmsford, adjoining to and near to Merrimack river, next to Pawtucket falls, and formerly belonging to Thomas Fletcher, deceased, containing one hundred acres, be the same more or less, with all the buildings thereon, the said Thomas Thissell and Moses Cheever paying to the said Jacob Kittredge twenty-five pounds, or eighty-three dollars and thirty-three cents, for the rent of the said farm, for the space and term of one year; bounded, beginning at a great elm tree standing at the corner of the town-way, near to Nathan Tyler's house, a little north of the barn on the said farm; from thence westerly, southerly, and easterly, by heaps of stones, and as the fence is, to the town-way at or near Josiah Fletcher's most northerly corner, to a heap of stones; from thence southerly, by the land of the heirs of Andrew Fletcher, deceased, about one hundred and twenty-four poles, to a stake and stones; from thence eastwardly, forty poles to a black oak stump with stones on it, by the land that was Josiah Fletcher's; from thence northerly, twenty-nine poles and a half, to a heap of stones; thence easterly, eight poles, to a stake and stones; from thence northerly and easterly, about one hundred and seventy poles, by the land that belonged to the heirs of Henry Fletcher, deceased, till it comes to Merrimack river; from thence up said river, till it comes to land that belongs to John Tyng, esquire; thence westwardly and northwesterly, by the said Tyng's land, till it comes to the said river; thence up said river, by said landing, to the end of a wall near to Tyler's mills; thence by the town-way to the bound first mentioned. To have and to hold the aforesaid land and buildings aforesaid, to them, the said Thomas Thissell and Moses Cheever, their heirs, executors or administrators, and assigns, from the date of these presents, for and during the term of one year from the date hereof, be fully completed and ended.

And the said Thomas Thissell and Moses Cheever, for themselves,

their heirs, executors and administrators, covenant with the said Jacob Kittredge, his heirs, executors, administrators, or assigns, that they will well and truly pay to the said Jacob Kittredge the sum of eighty-three dollars and thirty-three cents, at the end of one year; also, that they, the said Thomas Thissell and Moses Cheever, will not by themselves, nor by their leave and permission, cut any wood now standing on the said farm, except bushes, only necessary for mending fence on the said farm; and that the hay cut on the said farm shall be spent and used on the same; and that the said Thomas Thissell and Moses Cheever shall and will pay and discharge all taxes and rates whatsoever wherewith the said land may be charged, during the said term of one year, and will plough and sow half as many acres of land with rye this present year, and in good season, as is now sowed on the said farm; and that they will not commit any waste on the said lands, but at the expiration of the term of one year will restore and give up the said lands and buildings, unto the said Jacob Kittredge, his heirs, executors, administrators, or assigns, in a quiet peaceable possession and enjoyment of the same appurtenances aforesaid, without any let, hindrance, or molestation whatever.

In witness whereof, the parties to these presents have interchangeably set their hands and seals, this tenth day of April, 1796.

JACOB KITTREDGE & Seal.

Signed, sealed, and delivered, in presence of—

WILLIAM MALONE.

THOMAS HOVEY.

No. 8. *Copy of lease—Jacob Kittredge to Moses Cheever*, 1803.

This indenture of lease witnesseth, that I, Jacob Kittredge, of Brookfield, in the county of Worcester, and Commonwealth of Massachusetts, physician, let and lease unto Moses Cheever, of Chelmsford, in the county of Middlesex, and commonwealth aforesaid, husbandman, a certain farm in Chelmsford, bounded partly on Merrimack river, near Pawtucket falls, which formerly belonged to Thomas Fletcher, late of Chelmsford, deceased, containing about one hundred acres, be it more or less, with all the buildings thereon, for the term of three years from the tenth day of April last; for which the said Moses Cheever agrees to pay to said Kittredge three hundred dollars, viz., one hundred dollars annually, for three years next ensuing the tenth day of April last; said leased farm is bounded as follows, viz't; beginning at the great elm tree near the corner of a town-way, and near Benjamin Melvin's house, and on the north of the barn on said leased premises; then running southerly, westerly, and easterly, by heaps of stones, as the fence now stands, to the town-way at or near Joseph Fletcher's most northerly corner, to a heap of stones; thence southerly, by the land belonging to the heirs of Andrew Fletcher, late of Chelmsford, deceased, about one hundred and twenty-four poles, to a stake and stone by Nathan Tyler's land; then easterly, by said Tyler's land, forty poles, to a black oak stump with stones on it; then northerly, by Josiah Fletcher's land, twenty-nine poles and a half, to a heap of stones; then easterly, eight poles, to a stake and stones; then northerly and easterly, about one hundred and seventy poles, by Josiah Fletcher's land, to Merrimack river; then up

said river to land belonging to the heirs of John Tyng, esq., deceased; then westerly and northerly, by said Tyng's heirs' land, to said river; then up said river, and by said heirs' land, to the end of a wall near Tyler's mill, so called, on the place where said mill stood of late; then by said town-way to the bound first mentioned, for him, the said Moses Cheever, his heirs and assigns, to use, occupy, and improve, during the term of three years next ensuing the tenth day of April last.

And the said Moses Cheever on his part, for himself, his heirs, and assigns, doth covenant with the said Jacob Kittredge, his heirs and assigns, that he will make no waste on said farm, and make use of all the manure on said farm which proceeds therefrom; and to cut no wood nor timber thereon, excepting what is necessary for repairing the fences thereon; and plough no more land on said farm than what has been ploughed yet afore; and husband said farm with care and prudence; and to pay all the taxes for said farm during the term of three years as aforesaid; and to pay the said Jacob Kittredge, his heirs or assigns, the sum of three hundred dollars for the use of said farm, viz't, one hundred dollars annually during the term of three years as aforesaid; and at the end of the three years aforesaid, to deliver up said premises to said Kittredge, his heirs or assigns, peaceably and in good order.

In witness whereof we have set our hands and seals, this tenth day of May, 1803.

JACOB KITTREDGE and Seal.
his
MOSES X CHEEVER and Seal.
mark.

In presence of—
JOSIAH FLETCHER,
NATHAN COBURN.

No. 9. *Extension of said lease*, 1806.

Know all men, that it is agreed, by and between the within named Jacob Kittredge and Moses Cheever, that the said Cheever shall continue to have and occupy the within described premises for the further term of three years from and after the expiration of the within lease, upon the same agreements, rents, and covenants as are within expressed; in addition to which, the said Cheever agrees to do as much labor upon the said farm yearly, in ditching and manuring the meadows, and in building wall, as shall be reasonably worth eight dollars.

In witness whereof, the parties have hereto set their hands and seals, this 15th day of May, A. D. 1806.

JACOB KITTREDGE and Seal.
his
MOSES X CHEEVER and Seal.
mark.

In presence of—
ASAHEL STEARNS.

No. 10. *Extension of said lease in* 1809.

Know all men by these presents, that it is agreed, by and between

the within named Jacob Kittredge and Moses Cheever, that the said Cheever shall continue to occupy the within described premises for the further term of three years from and after this date, upon condition that the said Moses Cheever do build a corn-house 13 feet square, well built and finished, with a plank floor, and pay the said Kittredge for the first year eighty-five dollars, and the second and third years one hundred dollars each year.

In witness whereof, the parties have hereunto set their hands and seals, this fifteenth day of April, A. D. 1809.

JACOB KITTREDGE and Seal.
his
MOSES X CHEEVER and Seal.
mark.

In presence of—
ELISHA FORD.

No. 11. *Copy of mortgage deed—Benjamin Melvin to Jonathan Williams*, 1785.

Know all men by these presents, that I, Benjamin Melvin, of Chelmsford, in the county of Middlesex, yeoman, in consideration of one hundred pounds, lawful money, paid me by Jonathan Williams, of Chelmsford, in the county of Middlesex, merchant, the receipt whereof I do hereby acknowledge, do hereby give, grant, and convey, to the said Jonathan Williams, his heirs and assigns, forever, a certain tract of land in said Chelmsford, containing sixteen acres, being pasture land, called Speer's Brook pasture, bounded westerly by land of Andrew Fletcher, southerly and easterly by land of Josiah Fletcher, and northerly by land of said Benjamin Melvin. Also, another tract of plough land, adjoining the same, containing sixteen acres, bounded southerly on the afore said land, and easterly on land of the said Josiah Fletcher; northerly on land of the said Benjamin Melvin, and westerly on land of the said Andrew Fletcher.

To have and to hold the same to the said Jonathan Williams, his heirs. And I do covenant with the said Jonathan Williams, his heirs and assigns, that I am lawfully seized in fee of the premises; that they are free of all incumbrances; that I have good right to sell and convey the same to the said Jonathan Williams, to hold as aforesaid; and that I, my heirs, executors and administrators, shall and will warrant and defend the same to the said Jonathan Williams, his heirs and assigns, forever, against the lawful claims and demands of all persons.

Provided always, and these presents are upon this condition, that whereas I, the said Benjamin Melvin, by my promissory note under my hand, for value received, stand indebted to the said Jonathan Williams, the sum of one hundred pounds, which note bears even date with these presents; if therefore I, the said Benjamin Melvin, my heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to the said Jonathan Williams, his heirs, executors, administrators, or assigns, the said sum of one hundred pounds, with interest for the

same, in one year from the date hereof, according to the true intent and meaning of the said note, then this deed to be void and of none effect, but otherwise to remain in full force.

In witness whereof, I hereunto set my hand and seal, this ninth day of July, in the year of our Lord one thousand seven hundred and eighty-five.

BENJAMIN MELVIN & Seal.

Signed, sealed, and delivered in presence of—
EBENEZER BRIDGE, jr.
JOHN ADAMS.

MIDDLESEX, *ss:* *Chelmsford, Sept. 13th*, 1785.

Benjamin Melvin personally acknowledged this instrument to be his deed.

Before EBENEZER BRIDGE, *Jus pacis.*

MIDDLESEX, *ss:* *Cambridge, April 8th*, 1786.

Received and entered by WILLIAM WINTHROP.
Register.

The foregoing is a true copy of record book 94, page 45.

Cambridge, August 22nd, 1833.

Attest: WM. F. STONE, *Register.*

The tenants admitted that the last named mortgage deed to Williams included the demanded premises.

No. 12. *Copy of deed—Jonathan Williams to Benjamin Melvin*, 1794.

Know all men by these presents, that I, Jonathan Williams, of Chelmsford, in the county of Middlesex, and Commonwealth of Massachusetts, yeoman, in consideration of sixteen pounds, lawful money, paid to me by Benjamin Melvin, of Chelmsford aforesaid, yeoman, the receipt whereof I do hereby acknowledge, and for divers other good causes and considerations me hereunto moving, do, for myself and my heirs, remise, release, sell, and forever quit claim, unto the said Benjamin Melvin, and to his heirs and assigns, a certain tract of land, situated in the northeasterly part of Chelmsford aforesaid, in Chelmsford Neck, so called, containing about thirty-two acres, be it more or less, and is bounded as follows, viz't: Beginning at the northwesterly corner at the old road leading from Andrew Fletcher's to the house formerly Henry Fletcher's, now Josiah Fletcher's; then running southerly by land belonging to the heirs of Andrew Fletcher, deceased, to the top of Meeting House hill, so called, to the end of the wall; then easterly, on a wall by land of Josiah Fletcher, to the corner of the wall; then northerly by Josiah Fletcher or Joseph Fletcher's land, called the Long Pasture, to the aforesaid old road; then westerly by said old road to the bound first mentioned; it being that tract of land which the said Benjamin Melvin conveyed to said Williams by a mortgage deed not many years since; together with all the estate, right, title, in-

terest, use, property, claim and demand whatsoever, of me, the said Jonathan Williams, which I now have, or at any time heretofore had, of, in, and to the aforementioned premises, with the appurtenances, or to any part thereof, or which at any time heretofore has been held, used, occupied, or enjoyed as part or parcel of the same.

To have and to hold all the aforegranted and bargained premises, with appurtenances, to him, the said Benjamin Melvin, and to his heirs and assigns, forever, with the reversion and reversions, remainder and remainders, thereof, or any part or parcel thereof, forever; so that neither I, the said Jonathan Williams, nor my heirs, nor any other person or persons, claim from or under me or them, or in the name, right, or stead of me or them, shall or will by any way or means, have, claim, challenge, or demand any estate, right, title or interest, of, in, and to the aforesaid premises, with the appurtenances, or any part or parcel thereof, forever.

In witness whereof I, the said Jonathan Williams, with Elizabeth Williams, wife of Jonathan Williams, who relinquishes her right of dower in and unto said premises, have hereunto set my hand and seal, this twenty-fourth day of November, in the year of our Lord one thousand seven hundred and ninety-four.

JONATHAN WILLIAMS & Seal.
ELIZABETH WILLIAMS & Seal.

Signed, sealed, and delivered in presence of us—
EBENEZER BRIDGE,
NATHAN COBURN.

MIDDLESEX, *ss:* *Chelmsford, Nov. 24th*, 1794.

Jonathan Williams and Elizabeth Williams personally acknowledged this instrument to be their deed.

Before EBEN'R BRIDGE, *Jus. pacis.*

MIDDLESEX, *ss:* *Cambridge, Dec. 2nd*, 1794.

Received and filed by ABRAM BIGLOW,
Clerk of the court common pleas.

And accordingly entered by SAMUEL BARTLETT.
Register.

The foregoing is a true copy of record book 119, page 123.
Attest: WM. F. STONE, *Register.*

Cambridge, August 22nd, 1833.

No. 13. *Copy of deed*, 1794.—*Benjamin Melvin and wife to Joseph Fletcher.*

Know all men by these presents, that we, Benjamin Melvin, of Chelmsford, in the county of Middlesex, and Commonwealth of Massachusetts, yeoman, and Joanna Melvin, wife of the said Benjamin Melvin, for and in consideration of the sum of eighty pounds, lawful money, to us in hand paid by Joseph Fletcher, of Chelmsford aforesaid, yeoman, the receipt whereof we do hereby acknowledge, have

given, granted, bargained, and sold, and do by these presents, give, grant, bargain, sell, and confirm unto him, the said Joseph Fletcher, and to his heirs and assigns, a certain tract of land, situated in said Chelmsford, in the northwesterly part of said town, containing thirteen acres and fifty poles, and is bounded as follows, viz: Beginning at the northeasterly corner, at a stake and stones by the canal; from thence running south 52° west, fifteen poles, to a heap of stones by the lock in the canal; then running southwesterly by Speer's brook, so called, or the waters in the canal, to a heap of stones by the wall, being the northwesterly corner bound; then running south 4° east, by land of Andrew Fletcher's heirs, twenty-six poles in the wall, as the wall now stands, to a bound in the wall; then running south five degrees east, twenty-eight poles in the wall, as the wall now stands, by said Andrew Fletcher's heirs' land, to a bound in the wall; then running south 15° east, five and a half poles in the wall, to bounds on the top of Meeting-house hill, so called; thence, running northeasterly, by Joseph Fletcher's land on the southerly side of said Joseph Fletcher's house, to the southeasterly corner bound, being about thirty-eight poles; then running northerly about sixty-five poles, by the said Joseph Fletcher's land, called the Long Pasture, to the bound first mentioned. To have and to hold the above said granted and bargained premises to him, the said Joseph Fletcher, and to his heirs, and to his and their proper use, benefit, and behoof, forever; and we, the said Benjamin and Joanna Melvin, for ourselves, our heirs and assigns, do warrant and engage the above demised premises to him, the said Joseph Fletcher, and to his heirs and assigns, against the lawful claims and demands of all persons whatsoever.

In witness whereof, we, the said Benjamin and Joanna Melvin, have hereunto set our hands and seals, this 24th day of November, A. D. 1794.

BENJAMIN MELVIN and Seal.
JOANNA MELVIN and Seal.

Signed, sealed, and delivered in presence of—
EBENEZER BRIDGE,
NATHAN COBURN.

Acknowledged, November 24th, 1794, and recorded December 2d, 1794.

No. 14. *Copy of mortgage—Benjamin Melvin to James Varnum.*

Know all men by these presents, that I, Benjamin Melvin, of Chelmsford, in the county of Middlesex, and Commonwealth of Massachusetts, yeoman, in consideration of forty pounds, lawful money, paid by James Varnum, of Dracut, in the county and commonwealth aforesaid, esquire, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey unto the said James Varnum, and to his heirs and assigns, forever, a certain tract of land, situate in Chelmsford aforesaid, containing about ten acres, be the same more or

less, bounded: Beginning at the northeasterly corner, at a stake and stones, by a wall in Joseph Fletcher's Long Pasture; then northerly, crossing the canal, bounding by Joseph and Andrew Fletcher's land, to an oak stump with stones on it; then turning westerly, bounding by land let to Dr. Jacob Kittredge, till it comes to a stake and stones, by land belonging to the heirs of Andrew Fletcher; then turning southerly, bounding by said heirs' land, crossing the said canal to a small white oak tree marked, by Joseph Fletcher's land; then turning easterly, bounding by said Joseph Fletcher's land, to the bound first mentioned. To have and to hold the aforegranted premises to the said James Varnum, his heirs and assigns, to his and their use and behoof, forever.

And I do covenant with the said James Varnum, his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free of all encumbrances; that I have good right to sell and convey the same to the said James Varnum; and that I will warrant and defend the same premises to the said James Varnum, and to his heirs and assigns, forever, against the lawful claims and demands of all persons. Provided, nevertheless, that if the said Benjamin Melvin, his heirs, executors, or administrators, or assigns, pay to said James Varnum, his heirs, executors, administrators, or assigns, the sum of forty pounds, with the interest on or before the last day of July, which will be in the year of our Lord 1795, then this deed, as also a certain note, bearing even date with these presents, given by the said Benjamin Melvin to the said James Varnum, conditioned to pay the same sum and interest at the time aforesaid, shall both be void, otherwise shall remain in full force.

In witness whereof, I, the said Benjamin Melvin, have hereunto set my hand and seal, the 6th day of April, A. D. 1795.

BENJAMIN MELVIN and Seal.

Signed, sealed, and delivered in presence of—
SALLY VARNUM.
PARKER VARNUM.

Acknowledged April 6th, 1795. Recorded April 9th, 1795.

No. 15. *Copy of deed—B. Melvin and wife to Tenants*, 1795.

Know all men by these presents, that we, Benjamin Melvin, husbandman, and Joanna, my wife, of Chelmsford, in the county of Middlesex, and Commonwealth of Massachusetts, in consideration of two hundred and thirty-seven dollars paid by the Proprietors of the Locks and Canals on Merrimack river, the receipt whereof we do hereby acknowledge, do hereby give, grant, sell, and convey unto the said Proprietors of the Locks and Canals on Merrimack river, their successors and assigns, forever, a certain piece of land, situate in Chelmsford aforesaid, containing four acres and twenty rods, bounded as follows, to wit: Beginning at the northwesterly corner of land, lately sold by me, the said Benjamin, to Joseph Fletcher, at a small white oak tree;

thence, running northerly about twenty-three rods, by land lately of Andrew Fletcher, deceased, to a stake and stones, one rod west of a white oak tree; thence, turning and running north 64° east, twenty-five rods to a stake and stone; thence, more easterly, ten rods and a quarter of a rod to a white oak tree; thence, still easterly, six rods and a half a rod, to a stake and stones by land of us, said Melvin and wife, to land lately sold by Joseph Fletcher to said Proprietors; thence, turning and running southerly across the canal seven rods, by land lately purchased of said Joseph Fletcher by said Proprietors, to a stake and stones; thence, turning and running southwesterly fifteen rods, to a stake and stones, by land of Joseph Fletcher; thence, south 57° west thirty rods, by land of the said Joseph, to the bounds first mentioned; a plan of the premises being hereunto annexed, with the appurtenances. To have and to hold the aforegranted premises to the said Proprietors, their successors and assigns, to their use and behoof, forever.

And we do covenant with the said Proprietors, their successors and assigns, that we are lawfully seized in fee of the aforegranted premises; that they are free of all encumbrances; that we have a good right to sell and convey the same to the said Proprietors in manner aforesaid; and that we will warrant and defend the same premises to the said Proprietors, their successors and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, we, the said Benjamin Melvin and Joanna, my wife, have hereunto set our hands and seals, this tenth day of November, A. D. 1795.

BENJAMIN MELVIN and Seal.
JOANNA MELVIN and Seal.

Signed, sealed, and delivered in presence of—
NATHAN TYLER.
PARKER VARNUM.

Acknowledged Nov. 10th, 1795; and recorded Feb. 16th, 1796.

No. 16. *Copy of deed—Benjamin Melvin and wife to Nathan Tyler.*

Know all men by these presents, that we, Benjamin Melvin, of Chelmsford, in the county of Middlesex, and Commonwealth of Massachusetts, yeoman, and Joanna, the wife of the said Benjamin; in consideration of one hundred and twenty dollars paid by Nathan Tyler, of Chelmsford aforesaid, yeoman, the receipt whereof we do hereby acknowledge, do hereby give, grant, sell, and convey unto the said Nathan Tyler, and to his heirs and assigns, forever, a certain tract of land, situate in the northeasterly part of Chelmsford aforesaid, containing five acres and one hundred poles, as by a plan of the same, bounded, beginning at the southwest corner at a stake and stones, by the canal, one rod south sixty degrees west from a white oak tree; thence, north 31½° west, twenty-five and three-fourths rods, bounding by the heirs of Andrew Fletcher's land to a stake and stones; then, north 73° east, thirty-nine and three-fourths poles, bounding by land lately owned by Jonathan Williams, to a black oak stump; then south 2°

east, twenty-seven poles and three-fourths, to a stake and stones by Andrew Fletcher's land; then west six and one-half poles, to a white oak stump; then north 84½° west, ten and one-half poles, to a stake and stones; then south 60° west, twenty-two and one-half poles, to the bounds first mentioned. To have and to hold the aforegranted premises to the said Nathan Tyler, his heirs and assigns, to his and their use and behoof, forever.

And we do covenant with the said Nathan Tyler, his heirs and assigns, that we are lawfully seized in fee of the aforegranted premises; that they are free of all encumbrances; that we have good right to sell and convey the same to the said Nathan Tyler; and that we will warrant and defend the same premises to the said Nathan Tyler, his heirs or assigns, forever, against the lawful claims and demands of all persons.

In witness whereof, we, the said Benjamin Melvin, and have hereunto set our hands and seals, this 17th day of May, A. D. 1796.

BENJAMIN MELVIN & [SEAL.]
JOANNA MELVIN & [SEAL.]

Signed, sealed, and delivered in presence of—
SAMUEL SMITH,
PARKER VARNUM.

Acknowledged May 27th, 1796; and recorded May 30th, 1796.

The tenants then called the following witnesses:

Elisha Ford.

Who testified he was sixty-eight years old; that, when young, he used to associate with the sons of Andrew Fletcher and Benjamin Melvin; that Benjamin Melvin occupied the premises claimed when he was a boy. Did not know of his occupying south of the canal. Recollect the piece claimed, and of apples growing there; and of the boys going there for apples. There was not a great many apples. Recollects in 1796, when he and his father were drawing timber across to the canal, he saw Moses Cheever making a fence across the land next to Nathan Tyler. Never saw Nathan Tyler working there, but has seen his boys. Tyler continued to occupy this lot from the time he saw Cheever making fences there till he sold to the Merrimack Company. Next after Cheever and Thissell, Wheelwright occupied two or three years; then Blanchard; can't tell how long Blanchard occupied. Thinks 2 or 3 years. Then Cheever came on again; and in 1809 he witnessed the renewal of Cheever's lease. Knew no other persons occupying. Cheever pastured the first year. Rye was sowed some years by Wheelwright and Blanchard, and sometimes buckwheat. Cheever, after his return, occupied till he sold to the Merrimack Company; pasturing it some years, and some years sowing it with rye and buckwheat. That he never saw Dr. Kittredge doing any thing upon the land claimed, or upon

the farm. Dr. Kittredge lived in Brookfield, Worcester county. Until Tyler bought there was no division fence across the Thomas Fletcher land on Tyler's north line. There was a division fence a few rods north of Speer's brook across said land, and also an old wall between Tyler's land and the south end of the Melvin three or four acre piece, extending from Andrew Fletcher's land part way across the rye field.

Moses Cheever

Testified, he recollected living on the Thomas Fletcher farm first, the year the canal broke in 1796. Then he lived in Dracut six years; then returned and lived on the farm until he sold to the Company. That the first year he was there he helped build the fence next to Nathan Tyler. That Tyler's part was made of boards, and his part of slabs. The first year he pastured it. After he came on the second time he ploughed and sowed it three or four times. Sometimes with rye, and sometimes with buckwheat. He used to burn up the straw. When he returned in 1803, there was buckwheat straw on the land claimed. That he always lived in the old Thom. Fletcher house; and lived there till within about five years. That he has never claimed or occupied the land claimed since he sold to the Company. That he knew of no one claiming, except Kittredge, while he occupied. He was interrupted by no one. That he used to build a wooden fence from the old wall, which extended part way across the rye field, across to the Portuguese piece. This fence was not always kept up. That he never knew Dr. Kittredge to go upon the demanded premises; and that Dr. Kittredge never went round the farm with him, or showed him where to occupy. That he lived in Brookfield, and used to come down once or twice a year for his rent. And that, after Dr. Kittredge's death, he paid the rent to his widow, and not to his heirs or administrators. That he intended to occupy the land included in his leases, and no more. He claimed all Kittredge said he owned. That he was present when Richardson, of Westford, a deputy sheriff, put Melvin's things out of doors; that Melvin's family *staid* in a small shed all night; and that Dr. Kittredge was present at the time, and came to have Melvin put out of possession, and witness put in as Kittredge's lessee; as he was by Kittredge after Melvin was put out.

Jonathan Tyler

Who testified he was 54 years old; the son of Nathan Tyler, and lived near the Falls. Did not recollect when Cheever was upon the farm the first time; but recollected of Wheelwright and Blanchard living on the farm, and of one of them having rye or buckwheat on the demanded premises, but could not fix the year. That after Cheever came on the second time, he used to occupy the demanded premises by pasturing, and sometimes by ploughing and sowing. He remembered seeing Melvin turned out of possession when witness was a boy about five years old; and Cheever, after entering, continued in possession till the land was sold to the company.

Moses Cheever, jun'r,

Testified, that he was 52 years old. Lived in Lowell from 1803 till 1812. That his father occupied the demanded premises, and no one else. Never heard Melvin or others claim it. That Joseph Fletcher adjoined on the east side. That his father used to build one-half of the fence next to Tyler, and Tyler the other. His father used to pasture the land claimed, and sometimes ploughed and sowed it. He used to sow the whole of the rye field, from east to west, south of the old fence, a little south of the Melvin 3 or 4 acre piece; and that this piece, west of the farm, Melvin occupied. The demanded premises was a rye field when sold by the Kittredge heirs in 1822.

Rufus Melvin,

Who testified, that he was 43 years old. That he was the son of Benjamin Melvin, and lived at home till he was 19 years old. His father occupied the 3 or 4 acre piece and a small lot by the river. Never knew him to occupy or claim any other. Cheever occupied the land claimed. He used to pasture it. Has seen rye growing upon it three or four times. Cheever's boys used to drive their cattle there. There was an old wall north of Tyler's land, which extended half-way across the rye field. This old wall was forty or fifty rods north of Tyler's land, and about three or four rods south of the south end of the Melvin 3 or 4 acre piece, which his father used to occupy. That the rye field leased, between the county road and Tyler's land, contained 12 or 14 acres; and the old wall last mentioned divided it about in the middle. That as long ago as he could recollect, there was an old wall at the south end of the Melvin 3 or 4 acre piece, and some oak trees standing in it.

John Blanchard,

Who testified he was 72 years old. That he took the farm of Kittredge two years with Wheelwright, and one year alone. He and Wheelock married sisters. That he occupied down to Tyler's land; and the last year he sowed buckwheat. Dr. Kittredge never showed or directed him where to occupy. He hired it of Kittredge the last year; and they occupied all the premises, and Melvin only a small piece, being on the west side of the farm.

George R. Baldwin,

Who testified that he made the plan produced by the tenants, dated March 1825, with his name on it, with title as follows: "A plan of sundry pieces of land belonging to the Merrimack Manufacturing Company, Chelmsford, March, 1825, by George R. Baldwin." Some of the lines might have been put on by guess, but where courses and distances are marked, thinks it must have been his actual measurements. Might have been some measurements shown to him. He surveyed all the fences, but cannot tell how he got his information. He made the plan for the Merrimack Company in 1825. This is the same plan exhibited

by me to James B. Francis, November 4th, 1845, and by him marked A. J. B. F.

The tenants then introduced the following deeds from the heirs of Jacob Kittredge, and others, viz:

No. 17.

A deed with covenants of general warranty, from Samuel Converse and wife, of North Brookfield, in the county of Worcester, to Moses Cheever, dated September 20, 1820, duly acknowledged and recorded, whereby, for the consideration of $168 33, they give, grant, sell, and convey, unto the said Moses Cheever, his heirs and assigns, one undivided tenth part of about one hundred acres of land, be the same more or less, with the buildings thereon standing, situate in the town of Chelmsford, in the said county of Middlesex, it being the same real estate on which the said Moses Cheever now lives, and was conveyed by Benjamin Melvin and Joanna Melvin to Dr. Jacob Kittredge, by deed dated the twenty-seventh day of April, in the year of our Lord one thousand seven hundred and eighty-two.

No. 18.

A deed, with similar covenants, from Oliver Kittredge, of Salem, in the county of Essex, to said Cheever, dated the 5th day of December, 1820, duly acknowledged and recorded, whereby, for the consideration of $164, he gives, grants, sells, and conveys, unto the said Moses Cheever, his heirs and assigns, one undivided tenth part of about one hundred acres of land, be the same more or less, with the buildings thereon standing, situate in the town of Chelmsford, in the said county of Middlesex, being the same estate on which the said Moses Cheever now lives, and which was conveyed by Benjamin Melvin and Joanna Melvin to Dr. Jacob Kittredge, by deed dated the twenty-seventh day of April, in the year of our Lord one thousand seven hundred and eighty-two.

No. 19.

A deed, with similar covenants of seisin and warranty, from Joseph Kittredge, of North Brookfield, to the said Moses Cheever, dated the 21st August, 1820, duly acknowledged and recorded, whereby, in consideration of $168 33, he gives, grants, sells, and conveys, unto the said Moses Cheever, his heirs and assigns, one undivided tenth part of about one hundred acres of land, be the same more or less, with the buildings thereon standing, situate in the town of Chelmsford, in the said county of Middlesex, being the same estate on which the said Moses Cheever now lives, and which was conveyed by Benjamin Melvin and Joanna Melvin to Dr. Jacob Kittredge, by deed dated the twenty-seventh day of April, in the year of our Lord one thousand seven hundred and eighty-two.

No. 20.

A deed, with similar covenants, from Lucius Wright and wife, of

Westfield, Massachusetts, to said Cheever, dated 21st August, 1820, duly acknowledged and recorded, whereby, for the consideration of $200, give, grant, sell and convey, unto the said Moses Cheever, his heirs and assigns, a certain tract or parcel of land, it being an undivided tenth part of the farm whereon Moses Cheever now lives, in Chelmsford aforesaid, being the same farm which was conveyed by Benjamin Melvin and Joanna Melvin to Dr. Jacob Kittredge, by deed, in the year one thousand seven hundred and eighty-two, and supposed to contain one hundred acres, be the same more or less.

No. 21.

A deed, covenanting against all persons claiming under him, from Asaph Kittredge, of Paris, in the State of Maine, to Moses Cheever, dated 24th February, 1820, duly acknowledged and recorded, whereby, for the consideration of $168, he grants, sells, and quit-claims, unto the said Moses Cheever, his heirs and assigns, all his right, title, claim, and demand, in and unto a certain tract of land, situate in Chelmsford aforesaid, containing about one hundred acres, be the same more or less, meaning to convey one undivided tenth part thereof, it being the same farm on which the said Moses Cheever now lives, and the same land and buildings which was conveyed by Benjamin Melvin and Joanna Melvin to Dr. Jacob Kittredge, by deed dated the twenty-seventh day of April, in the year of our Lord one thousand seven hundred and eighty-two.

No. 22.

A deed from Eli Forbes, as guardian of said Justus, Otis, Whitney, Lucinda, minors, and Fletcher Kittredge, a *non compos mentis*, all of North Brookfield, to Moses Cheever, dated the tenth day of February, A. D. 1820, and duly acknowledged and recorded, for the consideration of $505, and by authority of a license from the supreme judicial court duly granted for that purpose, "gives, grants, bargains, sells, and confirms, unto the said Moses Cheever, and his heirs and assigns, forever, three undivided tenth parts in quantity and quality of about one hundred acres of land, be the same more or less, and the buildings thereon, situate in the town of Chelmsford, in said county of Middlesex, being the same real estate on which the said Moses Cheever now lives, and which was conveyed by Benjamin Melvin and Joanna Melvin to Dr. Jacob Kittredge, by deed dated the twenty-seventh day of April, in the year of our Lord one thousand seven hundred and eighty-two." He covenants, among other things, that his wards "are seized of the premises." It was admitted that said Forbes complied with all the requirements of law in making said sale, and that he was duly authorized.

No. 23.

A deed of quit-claim from John Kittredge, of Brookfield, to said Eli Forbes, dated the 29th day of November, A. D. 1819, and for the consideration of $100, grants, sells, and quit-claims, unto the said Eli

Forbes, his heirs and assigns, all my interest, right, title, claim, and demand, in and unto a certain tract or parcel of land, situate in Chelmsford, in the county of Middlesex, and commonwealth aforesaid, containing one hundred and thirty acres, be the same more or less, it being that part of the real estate formerly owned by Mr. Thomas Fletcher, late of said Chelmsford, deceased; which was, for many years previous to the year 1814, rented out by Dr. Jacob Kittredge, late of said North Brookfield, deceased, with all the buildings thereon standing, and all the privileges and appurtenances thereunto belonging; meaning by this deed to convey one undivided tenth part of said real estate, lying in common with my brothers and sisters.

No. 24.

A deed of quit-claim from said Eli Forbes, dated the tenth day of February, 1820, duly acknowledged and recorded, whereby, for the consideration of $168 33, he gives, grants, sells, and forever quit-claims unto him, the said Moses Cheever, his heirs and assigns, forever, one undivided tenth part in quantity and quality of about one hundred acres of land, be the same more or less, and the buildings thereon, being the same estate on which the said Moses Cheever now lives, situated in the town of Chelmsford, in said county of Middlesex, and was conveyed by Benjamin Melvin and Joanna Melvin, to Dr. Jacob Kittredge, by deed dated the twenty-seventh day of April, in the year of our Lord one thousand seven hundred and eighty-two.

No. 25.

A deed containing covenants of seisin, in fee and general warranty, from Moses Cheever to Thomas M. Clark, dated the 21st November, 1821, duly acknowledged and recorded, whereby, for the consideration of $1,200, he "gives, grants, sells, and conveys, unto the said Thomas M. Clark, his heirs and assigns, six undivided tenth parts of one hundred acres of land, with the buildings thereon, and the privileges to the same belonging, situate in the northerly part of said Chelmsford, being the farm on which I now live, and the same that was conveyed by Benjamin Melvin and Joanna Melvin to Jacob Kittredge, by deed dated the twenty-seventh day of April, A. D. 1782. For a more particular description of said premises, and the bounds thereof, reference may be had to said deed.

No. 26.

A deed, with similar covenants, from said Cheever to said Clark, dated the 28th day of November, 1821, duly acknowledged and recorded, for the consideration of four hundred dollars, "gives, grants, sells, and conveys to the said Thomas M. Clark, his heirs and assigns, two undivided tenth parts of one hundred acres of land, be the same more or less, situate in said Chelmsford, it being the farm on which I now live, and the same that was conveyed by Benjamin Melvin and Joanna Melvin to Jacob Kittredge, by deed, dated April 27th, A. D. 1782; for a more particular description of the same, and the bounds thereof, reference may be had to said deed."

No. 27.

A deed, with similar covenants, from said Cheever to Kirk Boott, dated the 3rd day of January, A. D. 1822, duly acknowledged and recorded, for the consideration of two hundred dollars, "gives, grants, sells, and conveys to said Kirk Boott, his heirs and assigns, one undivided tenth part of the farm on which I now live, situate in said Chelmsford, containing one hundred acres, be the same more or less, it being the same estate that was conveyed by Benjamin Melvin and Joanna Melvin to Jacob Kittredge, by deed dated April 27th, A. D. 1782. For a more particular description of the same, and the bounds thereof, reference may be had to said deed."

No. 28.

A deed of quit-claim from Thomas M. Clark to Kirk Boott, and others, dated the 13th December, 1821, duly acknowledged and recorded, conveying to said Boott and others, as follows, to wit: "Six undivided tenth parts of a certain parcel of land in Chelmsford, containing about one hundred acres, conveyed to me by Moses Cheever, by deed dated November 21st, 1821, and left in the registry of deeds office for said county of Middlesex for record."

"Also, two undivided tenth parts of a certain parcel of land lying in Chelmsford, containing about one hundred acres, conveyed to me by Moses Cheever, by deed dated November 28th, 1821, and left in said office for record. For a more particular description of said premises, reference is had to said deeds."

No. 29.

A deed of quit-claim from Kirk Boott and others, to the Merrimack Manufacturing Company, dated the 18th day of May, 1822, duly acknowledged and recorded, conveying "eight undivided tenth parts of a certain parcel of land situate in Chelmsford, containing about one hundred acres, conveyed to Thomas M. Clark by Moses Cheever, by his two deeds, one dated the 21st and the other the 28th day of November, 1821, and left for record in the registry office. And for a more particular description of the premises, reference is had to said deeds."

No. 30.

A deed of quit-claim from Kirk Boott to said Merrimack Manufacturing Company, dated the 1st of March, 1822, duly acknowledged and recorded, conveying to said company "one undivided tenth part of a farm, lying in Chelmsford, containing one hundred acres, be the same more or less, conveyed to me by Moses Cheever, by deed dated January 3d, 1822, and left in the register's office for record. For a more particular description of said premises, reference is had to said Cheever's deed."

No. 31.

A deed from Austis Kittredge, administratrix to the estate of her late

husband, Benjamin Kittredge, late of Salem, deceased, to Henry Rice, dated the 14th day of July, 1824, duly acknowledged and recorded, conveys "seven and a half undivided one hundredth parts of about one hundred and ten acres of land, be the same more or less, with the buildings thereon standing, situate in the town of Chelmsford, county of Middlesex, and Commonwealth of Massachusetts, being the same estate called the Cheever farm, and the same which was conveyed by Benjamin Melvin and Joanna Melvin, to Dr. Jacob Kittredge, father of said Benjamin Kittredge, by deed dated the twenty-seventh day of April, in the year of our Lord one thousand seven hundred and eighty-two."

No. 33.

A deed from the same Austis Kittredge, as guardian of Benjamin, William, Henry, Edward, Augustus, Mary Ann, and Austis Maria Kittredge, minor heirs of her late husband, dated July 15th, 1825, duly acknowledged and recorded, conveying to said Henry Rice two and a half one hundredth parts of about one hundred and ten acres of land, be the same more or less, with the buildings thereon standing, situate in the town of Chelmsford, county of Middlesex, and Commonwealth of Massachusetts, being the same estate called the Cheever farm, and the same which was conveyed by Benjamin Melvin and Joanna Melvin to Dr. Jacob Kittredge, of Brookfield, now deceased, grandfather of said minors, by deed dated the twenty-seventh day of April, A. D. 1782, and recorded in the registry of deeds in Cambridge, in said county of Middlesex, by Thaddeus Mason, register at that time, in book 84, page two hundred and eighty-seven; which said deed is hereby referred to for a more particular description of said estate."

It is admitted that said Austis Kittredge, in making both of the aforesaid sales, complied with the requirements of law, and was duly empowered.

No. 34.

A deed of quit-claim from said Henry Rice to the Merrimack Manufacturing Company, dated the 9th day of November, 1825, duly acknowledged and recorded, conveying seven and a half one hundredth parts of about one hundred and ten acres, and giving the same description that is contained in the deed from Austis Kittredge to him; and refers to the same.

No. 35.

A deed of quit-claim from the said Merrimack Manufacturing Company to the tenants, dated January 2d, 1826, duly acknowledged and recorded, conveying to them the nine-tenths which had been conveyed by Moses Cheever to Thomas M. Clark and to Kirk Boott, describing them as follows, to wit: Also six undivided tenth parts of a certain parcel of land in Chelmsford, containing about one hundred acres, conveyed to Thomas M. Clark by Moses Cheever, by his deed dated the 21st day of November, 1821. Also two undivided tenth parts of a cer-

tain parcel of land in said Chelmsford, containing about one hundred acres, conveyed to Thomas M. Clark by Moses Cheever, by his deed dated the 28th day of November, A. D. 1821."

Also, one undivided tenth part of a farm in said Chelmsford, containing about one hundred acres, which was conveyed to the said Kirk Boott by Moses Cheever, by his deed date the third day of January, A. D. 1822." This deed, which embraces a number of other pieces of land, concludes its description part as follows: " It being the intention of the parties to these presents, that the said Merrimack Manufacturing Company should convey hereby to the said Proprietors of Locks and Canals on Merrimack river, all the estate, right, title, interest, claim, and demand whatsoever, of them, the said Merrimack Manufacturing Company, in and to all the said tracts and parcels of land, with their appurtenances; reference being had to the several deeds thereof herein above mentioned, for a more particular description of the same, and in and to all other real estate, if any, within the said towns of Chelmsford, Tewkesbury, and Dracut, in and to which the said Merrimack Manufacturing Company now have any right, title, interest, or estate, whatsoever."

No. 36.

A deed of quit-claim from Henry Rice to the tenants, dated December 14th, 1826, duly acknowledged and recorded, conveying two and a half one hundredth parts of about one hundred and ten acres, and refers to the deed from Austis Kittredge to him, dated July 15th, 1825, in these words, " and for a more particular description of the premises, I do hereby refer to the aforesaid deed, and to all deeds referred to in that deed, so that this reference shall have the same legal effect as though such descriptions were herein fully set forth."

The demandant then, for the purpose of showing that neither the mortgage of Melvin and wife to Kittredge, nor the leases, nor the deeds, through which the tenants claim, included the demanded premises, as the latter was separated from the hundred acre lot intended to be embraced in said deeds, &c., by a town bridle road and fence, offered the following evidence:

No. 8.

One part of an original lease from Jacob Kittredge to Benjamin Melvin, dated April 17th, 1789, for one year. This contained the same description of the leased premises as the lease of 1793, between the same parties, put in by the tenants.

No. 9.

A certified copy from the records of the town of Chelmsford, of the laying out of a town road, the 2d day of March, 1737 and '8, beginning at Hunt's ferry, at the mouth of Concord river, and running westerly through the Neck field, crossing Speer's brook by a ledge, and by Shepley's bars; thence on to Jonathan Bower's house. This was duly accepted by the town in their annual meeting the 7th of the same March.

No. 10.

An original deed from Jonathan Bowers to Thomas Fletcher, dated 13th May, 1754, conveying to said Fletcher the southerly portion of his farm, in which deed said town road is excepted, as making a division of the land.

An original warrant, oath, and return from the probate office of commissioners appointed to appraise all the real estate of which said Thomas Fletcher died seized in fee simple, of "each piece and parcel by itself, with their names of distinction, but and bounds, &c., and to set off to his widow one third part under his will, and to make return of their doings, &c., into the probate office, &c.

In their return, the following are described as constituting the homestead farm, viz:

1st. To about forty acres of mowing, tillage, and orchard land, lying and being in the northeasterly part of the town of Chelmsford, near the foot of Pawtucket falls, being part of the homestead, with a small dwelling house, small barn, and corn house being thereon; bounded northerly and easterly upon Merrimack river and land of Colonel John Tyng; southerly and westerly upon the county road, leading from the above dwelling-house to the mouth of Concord river, appraised at £152 2 8."

2nd. To about four acres of tillage, orcharding, and mowing land, situated in Chelmsford aforesaid, with two barns standing and being thereon, being part of the homestead farm, and parted from the above first mentioned tract of land only by said county road; bounded northerly and easterly by said road; southerly, upon Josiah Fletcher; westerly, upon Andrew Fletcher; appraised at £33 17 4.

3d. To another tract of land, being part of the homestead, lying between the county road, leading to Concord river mouth, and a town-way, leading from the dwelling-house belonging to the heirs of Henry Fletcher, deceased, to Abel Spalding's house, containing about fifty acres of mowing, tillage, and pasturage land; bounded westerly, upon Josiah Fletcher; and thence northerly, upon said Fletcher; then westerly, upon the land belonging to the heirs of Andrew Fletcher, deceased; southerly, upon said heirs' land and the above said town-way; eastwardly, upon land belonging to the heirs of Henry Fletcher, deceased, till it comes to the county road, near Merrimack river, near George's brook, so called; bounded northerly by said county road; appraised at £50 0 0.

4th. To about twenty-five acres of pasturage, mowing, and tillage land, situate in Chelmsford aforesaid, lying adjoining to and upon the southerly side of the aforesaid town-way, leading to Abel Spalding's house; said land is bounded westerly by land belonging to the heirs of Andrew Fletcher, deceased; southerly, upon a proprietor's road; and easterly, upon Josiah Fletcher's land; and northerly, upon the aforesaid town-way; appraised at £53 6 8.

Amongst the pieces set of to the widow, as her dower, is the following, viz., we have set off to said widow, as part of her thirds, about

three acres of woodland, bounded as follows: Beginning at the south-east corner of a lot of land belonging to Josiah Fletcher, by the land that was the said deceased Thomas Fletcher's; from thence, by said land to a stake and stones at the wall, by the road leading to Abel Spaulding's house; then westerly, by said road and land of the heirs of Andrew Fletcher, deceased; then northerly, by said heirs' land, till it comes to Josiah Fletcher's land; then easterly, by said Fletcher's land, to the corner first mentioned; which we appraise at £4 10 0

The warrant aforesaid bears date the 24th September, 1771; the oath to the commissioners November 13th, 1771; their return November 16th, 1771; which is approved by the executors and widow.

No. 11.

The demandant then produced the copy of a writ in favor of Jonathan Williams, dated the 29th August, A. D. 1786, wherein he demanded of the said Benjamin Melvin seizin and possession of the two lots of land described in the mortgage deed from Melvin to him, dated the 9th day of July, 1785, following the description in said mortgage. Said writ was returnable to the court of common pleas, to be holden at Concord, on the 2nd Tuesday of September, then next.

No. 12.

Also a copy of a conditional judgment, rendered in said action by the same court, at the November term of the same year, for seisin and possession, unless said Melvin paid, &c., within two months.

No. 13.

Also an office copy of a writ of hab. fac. possessionem, dated February 15th, 1787, for seizin and possession of the same lands, to wit, the two lots of sixteen acres each, described as in said mortgage, with the officer's return enclosed thereon, as follows:

No. 14.

"MIDDLESEX, *ss:*

March 10*th*, 1787.

I have this day given seizin and possession to the within named Jonathan Williams, of the within described parcels of land as the law directs, and made search for goods or estate whereon to levy for the costs, but could not find any, nor the body.

JOSIAH BOWERS,
Deputy sheriff.

No. 15.

Also as follows:

"MIDDLESEX, *ss:*

March 10*th*, 1787.

I acknowledge to have received seizin and possession of the within mentioned premises, or parcels of land, as the law directs.

JONATHAN WILLIAMS."

There was no evidence shewing that Benjamin Melvin occupied, or had any thing to do with, the premises, or any part thereof, so taken possession of by said Williams afterwards, until the conveyance from said Williams to him of the same premises, by deed dated the 24th day of November, 1794, before stated, and put in by the tenants.

No. 16.

Also an original release from James Varnum to Benjamin Melvin of his mortgage, dated the 7th day of November, A. D. 1795, giving substantially the same description and monuments as are contained in the mortgage, excepting it does not refer to Kittredge's land in any form, or mention it.

No. 17.

The demandant then introduced an office copy, duly authenticated, of the inventory of the estate, real and personal, of which Dr. Jacob Kittredge died seized and possessed, dated the 13th September, 1813; and the real estate at Chelmsford is not inventoried, or in any manner referred to.

No. 18.

Also an office copy of the warrant, oath, and return of commissioners, appointed the 26th August, 1814, to appraise all the real estate whereof Jacob Kittredge, late of North Brookfield, in the county of Worcester, died seized and possessed of in said commonwealth in his own right in fee simple; then to set off one full third part of said deceased real estate to the said Rebecca Kittredge, his widow, for her dower, and the remainder to distribute and divide among the heirs; to give notice to all persons interested, and if they are satisfied with your doings, let them signify it by countersigning, &c. Oath taken by them 6th September, 1814. Their return is dated October 4th, 1814. In their return they say, they have appraised all the real estate which Jacob Kittredge, &c., died seized and possessed of in said commonwealth, as shown to them by the heirs, amounting in all to $6,163 83, and then set off one third to the widow, and divided the remainder among the heirs, agreeably to said warrant. In these proceedings no mention is made, or notice taken, of any real estate in the town of Chelmsford. Their report is countersigned as follows:

"We, the subscribers, heirs to the above estate, do hereby signify our acceptance to the above distribution. Eli Forbes, guardian to Justus, Whitney, and Otis Kittredge; Elijah Kittredge, guardian for Fletcher Kittredge; Isaac Ranger, guardian to Lucinda Kittredge; Amos Bond, guardian to Mary Kittredge; Rebecca Kittredge, Joseph Kittredge, John Kittredge, Samuel Converse, Rebecca Converse, Oliver Kittredge, Asaph Kittredge."

Decree of judge of probate accepting the same the 25th day of October, A. D. 1814.

564.

No. 19.

An office copy of the account of the administrators of said Jacob Kittredge's estate, viz't: Oliver Kittredge and Eli Forbes, rendered and settled the 2nd Tuesday of April, 1817, in which they charge themselves with rents received from real estate in the years 1813 and 1814, but with none received from real estate in the town of Chelmsford.

No. 20.

Also an office copy of the last will of the widow, Rebecca Kittredge, made the 30th day of January, A. D. 1816, and proved and approved the 27th day of October, 1818, wherein she disposes of her personal estate, and devises her real estate to her eight surviving children, excluding the heirs of her two deceased children, and appointed her two sons, Benjamin and Asaph Kittredge, the executors of said will.

No. 21.

An office copy of warrant from the judge of probate for the county of Worcester, to Jonathan Clark, Jesse Trule, and Hermon Marshall, all of Tewkesbury, in the county of Middlesex, yeoman, authorizing them to appraise the estate belonging to Rebecca Kittredge, late of North Brookfield, widow, deceased, situate in said county of Middlesex, upon oath, and to deliver the same to the executors. The warrant is dated the 18th day of September, 1818. They took the oath April 19th, 1819, and on the 19th of April, 1819, made their return, as follows:

"An inventory of the estate of Rebecca Kittredge, of Brookfield, in the county of Worcester, deceased, testate, appraised upon oath by us, the subscribers, duly appointed to that service by the Hon. Nathaniel Paine, esquire, judge of probate of wills, &c., for the county of Worcester, viz't:

"A farm in the town of Chelmsford, in the county of Middlesex, containing one hundred acres, with the buildings thereon, appraised at $2,000 00.

April 19, A. D. 1819.

JAMES CLARK,
JESSE TRULE,
HERMON MARSHALL,
Appraisers."

WORCESTER, *ss:*

May 12, 1819. Personally appeared Benjamin Kittredge, executor on the estate of Rebecca Kittredge, late of North Brookfield, deceased, and solemnly swore that this is a just and true inventory of all the estate of which the said Rebecca died seized and possessed in the county of Middlesex, which has come to his knowledge; and that if any other property, which belonged to the said Rebecca, should be by him found, that he would cause an account of the same to be recorded at the probate office in Worcester.

Before NATH'L PAINE, *J. Probate.*"

No. 22.

Also an office copy of the petition and division of the portion of the real estate which Jacob Kittredge died seized of, which was set off to his widow as her dower, dated January 11th, 1819, and countersigned by all the heirs at law of Jacob Kittredge. In these proceedings there is no reference or mention of any estate in Chelmsford.

No. 23.

Also an office copy of the account of Benjamin Kittredge, as the executor of said Rebecca, rendered and settled the 4th day of January, A. D. 1820, wherein he charges the estate, and is allowed, $5 50 for the appraisement of the Chelmsford farm.

No. 24.

Also an office copy of letter of guardianship to Isaac Ranger, as guardian of Lucinda Kittredge, dated the 25th August, 1814.

No. 25.

Also a similar letter to Eli Forbes, as guardian of Justus, Otis, and Whitney Kittredge, dated 21st March, 1814.

No. 26.

Also an office copy of a similar letter to Amos Bond, as guardian of Mary Kittredge, dated the 18th day of March, 1814.

All the before named wards being minors.

No. 27.

Also an office copy of a similar letter to Elijah Kittredge, as guardian of Fletcher Kittredge, a *non compos mentis*, dated the 14th day of April, 1814.

The demandant then called the following witnesses:

Eli Forbes.

Who testified that he resided in Brookfield, and was one of the administrators of the estate of Dr. Jacob Kittredge, formerly of North Brookfield, and who died in 1813. That Oliver Kittredge was also administrator. That he was appointed guardian of Justus, Otis, and Whitney Kittredge, grand children of Dr. Jacob Kittredge. That upon the death of Dr. Jacob Kittredge, his widow, Rebecca Kittredge, claimed to be the owner of the farm in Chelmsford, where Cheever lived. She claimed to own it in her own right, and said it never had been conveyed by her, and received the rents of the same as long as she lived, as he always understood. He never knew of any of the heirs claiming to own the estate at Chelmsford; they said it belonged to their mother. That he never claimed nor received any rents for said farm, as guardian for his wards, nor claimed any interest in it for his wards until after the widow's death; supposing, as the heirs did, that it belonged to the widow. That he, during that time, never received or claimed any rents, as administrator, from that estate, either from the tenant or from

the widow; nor did the other administrator, to his knowledge. The administrators received the rents of the other real estate for one or two years after the doctor's death, and accounted for them. That the widow made a will, and willed all her real estate to her surviving children, excluding the grand children. Benjamin Kittredge acted as executor of the will. He claimed the farm under the will, and shew me one day the old mortgage from Melvin and wife to Dr. Kittredge. I took a copy of it, and told him that, according to that, the estate would belong to Dr. Kittredge, and not to his mother. He replied it could not be so; I advised him to take counsel upon it. This was some time after the widow's death, and was the first intimation that the estate did not belong to the widow. I then investigated the title in behalf of my wards, and found how the title was situated; and all the heirs soon became satisfied that they could have nothing under the will, and gave up the claim under the will and mother, and we concluded to go on and sell the estate under the father; and I accordingly proceeded to sell the portions which belonged to my wards. I was also authorized to sell for Fletcher and Lucinda Kittredge. The other heirs sold soon after we sold to Moses Cheever.

George Melvin.

Who testified in his deposition that he was born in the year 1767; that he was the brother of Benjamin Melvin, senior, and came to live with his brother Benjamin when he was eleven years old, and lived with him in the house which was formerly Thomas Fletcher's, and worked on his farm steadily until he was nineteen or twenty years old. He then lived with Andrew Fletcher about six months, and for five years after followed drawing lumber by the falls; and while engaged drawing lumber, he kept his team on his brother's farm the whole time, and boarded with him a part of the time. That he was well acquainted with the Thomas Fletcher farm, and the plan drawn by John Bennett, and annexed to the deposition of Nehemiah Fletcher, correctly described it, and the roads and monuments, as they were when he worked on the farm. That there was a town bridle road from Andrew Fletcher's to the houses of Henry, afterwards Josiah Fletcher's; that it crossed the Thom. Fletcher farm at the place marked on said plan; that there was a fence on one side, partly of stone and part wood, across the Thom. Fletcher farm; that there was no other division fence between this and Speer's brook across said farm. That south of the road, on the Thom. Fletcher farm, runs an old rye field, which extended near to Speer's brook, and used to be called about twelve acres; that on the north side of the road was woodland, some portion of which was cleared up before I left Chelmsford. This road was used and travelled while I lived in Chelmsford, as any other highway. He also testified, that "he recollected a black oak stump, with stones on it, which stood in the fence near the corner of the Long pasture and the Thom. Fletcher farm, and about six or eight feet from the bridle road, and about six or eight feet west from the corner of Joe and Josiah Fletcher's land."

He also testified that "some years ago, and before I left Chelmsford, I recollect a stake and stones about a rod west of the road from Thom. to Joe Fletcher's, and within one rod of the bars at the town bridle road. These stake and stones were not there when I first knew the farm; but were placed there afterwards, and stood a number of years." That the rye field was of thin poor soil, worn out by cultivation.

Henry Fletcher.

Who testified that he was the son of Josiah Fletcher, and grand son of Henry Fletcher; that he was forty-nine years of age; was born and brought up in the Henry Fletcher house, and worked upon that farm until his father sold it to the company; that he was well acquainted with the boundaries of said farm, and also the boundaries of the Thomas Fletcher farm, which adjoined his father's farm on the west and northwest. That, in 1833 or 1834, he pointed out to John Bennett, surveyor, the line between his father's farm and the Tom Fletcher farm, when he, Bennett, run out the latter farm. That he fixed the point where the line struck Merrimack river, exactly by a ledge of rocks in the river, to which the division fence used to come, and pointed it out to said Bennett; that he fixed the corner of the farm where the line turned from a northerly course easterly towards Merrimack river by a stump and spring, which he found; and he was positive that he fixed this corner within a rod, and so pointed it out to said Bennett. That the ground at the latter place had not been broken when he pointed out to Mr. Bennett, but remained in its natural state. That he pointed out to said Bennett the southwest corner of the Portuguese piece, or the first piece described in a deed from Joseph Fletcher to Thomas M. Clark, which is annexed to William Fletcher's deposition; that it was the corner of a wall near the canal, and was certain that he pointed out the corner correctly. That there was a log easterly on the line between the Portuguese piece and the corner by the stump and spring, which was not marked on Bennett's plan, but was marked upon the tenants'. That he pointed out the other boundaries of said Thomas Fletcher's farm to said Bennett, which were visible when he made his survey, as was also the traces of the town bridle road at the places indicated on said Bennett's plan. That he was well acquainted with the old rye field before and since the company came; that is, the land claimed; that was poor, thin, gravelly soil, and would not pay for fencing. That a portion of it, nearly or quite half, was entirely barren, being a bank of sand; that, on the north line of the land claimed, there was an old wall, which extended from Andrew Fletcher's land about half way across to the Portuguese piece, and that there used to be a wooden fence from the end of this wall across to the Portuguese piece; which wall and fence remained there until after the company came. This wooden fence was not always kept up; and after the company came this land was thrown common, and has never been fenced since, only some small yards connected with the houses, as they are built on their lands.

He also testified that he well recollected a large black oak stump, with stones on it, which stood in the fence near the northwest corner of the Portuguese piece, or as some called it Long pasture; that this was an old stump when he first saw it, when he was young, and had stones on it then, and had the appearance of being a boundary, from the stones piled upon it in the fence, and among the bushes; that he was well acquainted with Benjamin Melvin until his death; that he did not work on the land much, but was engaged in fishing, &c., on the river. That about ten years before his death he had a shock of the palsy, which rendered him helpless for some time, and he never recovered from it.

James Melvin.

Who testified he was the son of Benjamin Melvin, and was born in the year 1777; and resided with his father, and worked on his farm until he was 19 or 20 years old; that when ten or eleven years old he went round the farm with his father and Dr. Jacob Kittredge, and saw them point out and establish certain boundaries. This was just before his father hired the farm of Dr. Kittredge; that he saw them establish a stake and stones near the south end of the Melvin 3 or 4 acre piece, on the west side of the road, from Tom to Joe Fletcher's, as the southern boundary of the land claimed by Dr. Kittredge. They then went to the northwest corner of the Portuguese piece, and there established a black oak stump with stones on it, as the other corner bound of the land claimed by Kittredge; that he very frequently saw these monuments afterwards.

James Russell.

Testified that he came to Lowell to live in 1822; that the fences were then getting down, and the land claimed laid common, and has most of it remained so since, except what has been built upon; that no exterior fences have been kept up; that the Moody house was commenced late in the fall of 1823, and finished in the season of 1824; that he thought this house touched upon the land claimed, and that this was the first act the company did upon the land claimed. He further testified, that in the year 1823, while getting stone, he discovered near the north-west corner of the Portuguese piece, a large oak stump with stones on it, which stood in the bushes, in the line of an old fence which passed from east to west; that the stump was old and somewhat decayed, and from its appearance in the bushes, with stones heaped upon it, he had no doubt it had been a boundary at some time.

Paschal Fletcher.

Testified he was 46 years old, the son of Josiah Fletcher, and grandson of Henry Fletcher; that he was born and brought up on the Henry Fletcher farm; was well acquainted with the old rye-field; it was poor land, and would not pay for fencing. Recollected the wall and fence on the north line of the land claimed, which stood there till the company came; recollected the black oak stump with stones on it,

near the the northwest corner of the Portuguese piece; was intimately acquainted with Benjamin Melvin, senior, up to the time of his death; he worked but little on the land; was principally engaged on the river, fishing and lumbering. About the year 1820, he had a fit of the palsy, after which, for some years he was nearly helpless, and was unable after to do any labor; it also seemed to impair his mind considerably.

John Bennett.

Who testified that he was a surveyor and civil engineer; that he made the plan dated March, A. D. 1834, with his name upon it, from actual survey; that he run the lines as pointed out to him by Nehemiah and Moses Fletcher, the sons of Andrew Fletcher, and Henry Fletcher, and George Melvin, and that they were correctly delineated upon the plan; that the roads adjoining lands, objects, and monuments, were all correctly delineated upon said plan, as pointed out to him by said witnesses; that he run out the Portuguese piece by the description contained in a deed annexed to the deposition of William Fletcher, from Joseph Fletcher to Thomas M. Clark; that the farm north of the the town bridle road, exclusive of that piece marked "Melvin land." contains 106 acres and ten rods, and the area of the land south of the town bridle road, is 30 acres and 78 rods; and that the land claimed contains 7 acres and 142½ rods; that on the west line 124 poles from Josiah Fletcher's most northerly corner, extends to a point 7 rods and 15 links north of said town bridle road; that the distance from the north end of the Portuguese piece to Merrimack river, upon the line of the farm formerly owned by Henry Fletcher, is 156 rods; that the distance from the stake and stones standing by the town bridle road, and one rod west of the road leading from Tom to Joe Fletcher's, to the black oak stump with stones on it, at the north end of the Portuguese piece, as marked on said plan, is 40 rods, and the course north 88° east; that the west line of the demanded premises measures 35 rods, the south line next to Nathan Tyler 37 rods, and the course N. 73° east, and the east line 28 rods 21¼ links as marked on said plan; and that the traces of the town bridle road were visible at the places indicated on said plan, when he made the survey in 1833; and that he made the plan annexed to the deposition of Nehemiah Fletcher.

Nehemiah and Moses Fletcher.

In their depositions testified that they were the sons of Andrew Fletcher, whose farm adjoined the Tom Fletcher farm, all the way except a strip owned by Josiah Fletcher; that they were well acquainted with the Tom Fletcher farm, and its boundaries, and that the plan made by John Bennett correctly represented the same and the adjoining lands, as they were fifty or sixty years ago.

That in 1782, and until they removed to Maine, which was about the year 1804, there was a town bridle road by their father's house, by the Henry Fletcher house, to the mouth of Concord river; and that

it was used for all purposes, and travelled as any other highway or road. That this road entered the Thomas Fletcher farm about 40 rods of their father's house, and passed by the south end of the piece, called the Melvin land, and then straight across the Thomas Fletcher land, and close on the north side of the Portuguese Piece, as marked on said plan. That there was a fence on one side across the Thomas Fletcher land, part wall and part wooden fence. That the other roads on said plan were correctly laid down on said plan. That there was a county bridle road running by the Thomas Fletcher house to Concord river, which had gates and bars across it, and was about as much travelled as the town bridle road in 1782, and about as much of a road. That the county road marked on said plan was laid out in 1792, but not opened till some years after, owing to their father's death. That Benjamin Melvin occupied the rye field south of the town bridle road, until the time they moved away in 1804. That they knew of no one else occupying it. Moses Cheever occupied north of the town bridle road in 1804, and that there was no division fence between the town bridle road and Speer's brook until after Tyler bought. That there was a pair of bars at the town bridle where the path from Tom to Joe Fletcher's crossed it. That the rye field immediately south of the town bridle road was thin gravelly soil and of little value. And that the land on the north of this road was woodland, covered with pines and bushes.

William Fletcher

In his deposition, taken in 1834, testified, that he was 85 years old, and the son of Josiah Fletcher, who formerly owned the Portuguese Piece. That he helped to clear it up, and worked on it about the year 1775. That there was a town bridle road leading from the ferries by Henry Fletcher's, close along the north side of the Portuguese Piece, and then straight across the Tom Fletcher farm. And that this was as much of a road at that time as the other roads in the vicinity. That there was a fence on one side of it across the Tom Fletcher farm, and that he recollected no division fence between this and Speer's brook. That the first piece of land described in a deed from Joseph Fletcher to Thomas M. Clark, a copy of which is annexed to his deposition, is what used to be called the Portuguese Piece. That he crossed the road in 1782, and it appeared as it always had. He saw no difference in it.

Jeduthun Parker

Testified in his deposition, taken in 1834, that he was 71 years of age. Identified the town bridle road as the one laid out in 1737 and 1738, and locates it on the Tom Fletcher farm, at the place indicated on said plan. That there was a fence on one side of it across the Thomas Fletcher farm, partly wall and partly wood. And that he knew of no other fence between this and Speer's brook.

Sherchial Fletcher

In his deposition, taken in 1840, testified, that he was then 79 years

old, the son of Henry Fletcher. That he lived in his father's house till 1777. Then was in the service three years. Retired in 1780, and lived upon his father's farm till 1790. Was then absent about five years. Returned to his father's house, and staid about six months. That as long ago as he can recollect, and until the last time in Chelmsford, there was a town bridle road from his father's house to Andrew Fletcher's. That it was used for all purposes, and was as much of a road as the others in that vicinity. That there was a fence on one side, partly of stone and partly of wood, across the Thomas Fletcher farm; and that he and his brothers had done highway work upon this road within fifty or fifty-five years, under the direction of the highway surveyor. He locates the road as it is located on the plan. That he knew of no division fence between this road and Speer's brook.

Joseph Dakin

Testified he was 71. That he lived on the Henry Fletcher [farm] from 1787, three years. That the town bridle road was then in existence, and used for all purposes, and that his father and Andrew Fletcher did highway work, &c, during that time.

The demandant introduced a number of other witnesses who testified as to the existence of the town bridle road, and its use for all purposes, till the laying out of the county road in 1792; and that it was used some to a much later period; and that its traces were visible nearly the whole way when the companies came in 1822; and that it used to be as much of a road as the others in that vicinity.

The tenants also introduced a number of witnesses, who testified, they never knew or heard of any sort of a road, or cart path, from Andrew Fletcher's across the Thomas Fletcher farm to Henry Fletcher, at or near the place testified to by the plaintiff's witnesses, although they had lived in that vicinity, and were frequently over that route during the time testified to by the demandant's witnesses.

There was no evidence of any legal discontinuance of said road by the action of the town or county commissioners.

The demandant then introduced the deposition of Moses Cheever, which had been taken by the tenants, for the purpose of impeaching his testimony, in which he testified as follows:

"Adjoining Tyler's land I pastured it first; after two or three years, I ploughed and sowed it." And on cross examination, he says: "The slab fence mentioned, made by myself and Tyler, were made about the first of April. Mr. Tyler's part was made of boards, and mine of slabs. There had been an old fence there before, but it was all broken down. The whole field cleared between the county road and Tyler's land, I should think, contained thirteen or fourteen acres. I sowed the whole of the field with rye several times, and sometimes but half of it, up to an old wall that extended half way across the field. That he knew Tyler's line the first year. I went on to the farm by the old fence that

was there. No person shew me this line; my lease was bounded on Tyler's land.'

Thomas Thissell.

Who testified, that he was 86 years old, and took the lease with Cheever in 1796. That he and Cheever did not occupy any land south of the county road, laid out in 1792, that year. That there was a fence on the north side of the county road, but none on the south; and that Moses Cheever told him at Concord, some ten years ago, that he knew "we did not occupy the rye field next to Tyler's land that year, but that he had since."

The demandant put in the following agreement, viz:

"It is also admitted by the tenants, that the heirs of Benjamin and Joanna Melvin entered into the demanded premises in July, A. D. 1832, claiming the same; and in May, A. D. 1833, commenced writs of entry upon their own seisin for the recovery of the same; and that they prosecuted the same suits until the April term of the supreme judicial court, Middlesex county, A. D. 1835, when they became nonsuit; and thereupon commenced a writ of right in which they joined, and prosecuted the same until the October term, supreme judicial court, 1836, when Rufus Melvin, one of the heirs, executed a release of said action to the tenant."

(Signed) JOHN P. ROBINSON.
October 31st, 1845. *Attorney for the tenants.*

There was no evidence of the existence of a stake and stones at the northwest corner of the Tyler lot, nor of a stump or stump and stones on it, being at the northeast corner of said Tyler lot, except what results from the deeds in the case. Dr. Kittredge never resided on said land embraced in his said leases; and at the time the same were given he was residing in Brookfield, Worcester county; and there was no evidence that said leases were executed on said land. Nor was there any evidence that Dr. Kittredge, after 1789, nor his widow, nor his heirs, ever entered upon the demanded premises, or claimed them, or directed any one to enter and occupy the same, except what results from the documentary evidence in the case, and the testimony before recited.

Upon this evidence the court gave full instructions to the jury; and among them the demandant excepts to the following:

1st. That if they believed, from the evidence, looking to the monuments, length of lines, and quantities, actual occupation, &c., that it was more probable the parties to the mortgage of 1782 intended to include therein the demanded premises than otherwise, they should return their verdict for the tenants.

2nd. That the verdict of a former jury introduced by the tenants was not evidence to control this case or the issue.

3d. But if they should believe the testimony of James Melvin, that Doctor Jacob Kittredge pointed out on the land of his father certain monuments as the southern boundary of his mortgage, it would be

strong evidence that the parties to the mortgage intended originally to limit the mortgage to the line from these monuments; and that this evidence was strengthened and supported by the other testimony concerning the boundary south on Jonathan Williams.

4th. That if the tenants under their respective leases from Kittredge occupied and cultivated to the Tyler line, in such a manner as the owners of such land would ordinarily occupy and cultivate, and such an occupation had continued for the period of thirty years, it would constitute such an adverse possession as would bar the demandant's right to recover.

5th. That the possession of the premises by said lessees, under the lease, was the possession of Kittredge, the lessor, and his heirs; he claiming to have a deed which included them, and having turned Melvin out of possession—if it was of such a character as amounted to a disseisin, it would in law enure to the benefit of Kittredge and his heirs, and would be the disseisin and adverse possession of the lessor.

6th. That if the possession of Cheever and Thissell, in 1796, under Kittredge, included the demanded premises, and the same possession had been continued by the subsequent lessees, as the evidence tended to show it had been, down to the entry of the heirs of Melvin and wife, in 1832, it constituted in law such a continuity of possession as would bar the demandant's right to recover.

7th. That there was evidence, not contradicted, of a claim to the premises, by Mrs. Kittredge, after the death of her husband, and of rents being paid to her; but if Mrs. Kittredge, after the death of her husband, forgetting she had signed the original deed, claimed said premises, and received the rent therefor by mistake, till the heirs or their guardians discovered she had signed the deed, and the rents were then settled with them, the continuity of adverse possession would not thereby be disturbed; but there was no evidence of those rents which were paid to Mrs. Kittredge going to the heirs, or being repaid to them, except what is to be inferred from her will, and the tenants recognising the title of the heirs of Kittredge after the widow's death, and taking deeds of them. That, on the death of Kittredge, his rights descended to his heirs at law, some of whom were minors; that they became entitled to them, and the rents and profits paid by the lessees; that if the tenants, who held leases from Jacob Kittredge, and entered under them, remained in possession after his death, they should properly in law be regarded as tenants holding at will, or by sufferance of or under his heirs; and if the tenants saw fit, for any part of the time, to pay rent to Mrs. Kittredge, the mother, or did it by mistake, and afterwards paid it to the heirs, or their guardians, and took deeds from them, such payments to her ought not to impair the rights of the heirs, or those claiming under them; but the whole transaction was evidence to be weighed by the jury of a continued occupation by the lessees for and in behalf of those entitled in law to the rights which Kittredge claimed when alive.

Verdict.

The jury find that the tenants did not disseise the demandant in manner and form as the demandant hath alleged in his declaration.

JOSIAH S. CLARK, *Foreman.*

To which instructions of the court, given as aforesaid, the said plaintiff at the trial excepted, and prayed this, his bill of exceptions, to be signed and sealed by the court. All which, being found true, the same is accordingly signed and sealed.

In testimony whereof, I have hereunto set my hand and seal.

LEVI WOODBURY, [SEAL.]
Ass't Justice of Supreme Court.

I, James B. Robb, clerk of the courts of the United States for the district of Massachusetts, hereby certify, that the foregoing is a true transcript of the record of said cause.

In testimony whereof, I have hereto set my hand, and affixed the seal of the said circuit court, this day of August, in the year of our Lord one thousand eight hundred and forty-six, in the seventy-first year of the independence of the United States of America.

JAMES B. ROBB, *Clerk.*

Filed 23d Nov., 1846.